NOLO

"A whole book of good ideas."
LOS ANGELES TIMES

With Downloadable FORMS

20TH EDITION

California Tenants' Rights

Get the legal information and forms you need to:

- sign (or break) a lease
- get your deposit back
- fight an eviction
- withhold rent
- protect your rights under rent control

Attorneys Janet Portman & J. Scott Weaver

OVER 300,000 SOLD

Free Legal Updates at Nolo.com

This Book Comes With Lots of

FREE Online Resources

Nolo's award-winning website has a page dedicated just to this book. Here you can:

KEEP UP TO DATE. When there are important changes to the information in this book, we'll post updates.

GET DISCOUNTS ON NOLO PRODUCTS. Get discounts on hundreds of books, forms, and software.

READ BLOGS. Get the latest info from Nolo authors' blogs.

LISTEN TO PODCASTS. Listen to authors discuss timely issues on topics that interest you.

WATCH VIDEOS. Get a quick introduction to a legal topic with our short videos.

And that's not all.
Nolo.com contains thousands of articles on everyday legal and business issues, plus a plain-English law dictionary, all written by Nolo experts and available for free. You'll also find more useful **books, software, online apps, downloadable forms,** plus a **lawyer directory.**

With **Downloadable FORMS**

NOLO
LAW for ALL

Get forms and more at
www.nolo.com/back-of-book/CTEN.html

NOLO

The Trusted Name

(but don't take our word for it)

"In Nolo you can trust."

THE NEW YORK TIMES

"Nolo is always there in a jam as the nation's premier publisher of do-it-yourself legal books."

NEWSWEEK

"Nolo publications…guide people simply through the how, when, where and why of the law."

THE WASHINGTON POST

"[Nolo's]…material is developed by experienced attorneys who have a knack for making complicated material accessible."

LIBRARY JOURNAL

"When it comes to self-help legal stuff, nobody does a better job than Nolo…"

USA TODAY

"The most prominent U.S. publisher of self-help legal aids."

TIME MAGAZINE

"Nolo is a pioneer in both consumer and business self-help books and software."

LOS ANGELES TIMES

20th Edition

California Tenants' Rights

Attorneys Janet Portman & J. Scott Weaver

NOLO
LAW for ALL

TWENTIETH EDITION	JUNE 2016
Editor	MARCIA STEWART
Book Design	TERRI HEARSH
Cover Design	SUSAN PUTNEY
Proofreading	IRENE BARNARD
Index	SONGBIRD INDEXING SERVICES
Printing	BANG PRINTING

Names: Portman, Janet, author. | Weaver, J. Scott, author.
Title: California tenants' rights / by attorneys Janet Portman and J. Scott Weaver.
Description: 20th edition | Berkeley, CA : Nolo, June 2016. | Includes index.
Identifiers: LCCN 2016001448 (print) | LCCN 2016001835 (ebook) | ISBN 9781413322651 (pbk.) | ISBN 9781413322668 (epub)
Subjects: LCSH: Landlord and tenant--California--Popular works.
Classification: LCC KFC145 .P67 2016 (print) | LCC KFC145 (ebook) | DDC 346.79404/34--dc23
LC record available at http://lccn.loc.gov/2016001448

Please note

We believe accurate, plain-English legal information should help you solve many of your own legal problems. But this text is not a substitute for personalized advice from a knowledgeable lawyer. If you want the help of a trained professional—and we'll always point out situations in which we think that's a good idea—consult an attorney licensed to practice in California.

Acknowledgments

California Tenants' Rights is one of Nolo's earliest books, first published in 1972. Since then, it has helped countless California renters learn and assert their rights. We wish to acknowledge the contributions of its original authors, Jake Warner, Nolo's founder; Myron Moskovitz and Ed Sherman, coauthors; and the many editors and updaters who worked on the book over the years.

About the Authors

Janet Portman, an attorney and Nolo's Executive Editor, received undergraduate and graduate degrees from Stanford and a law degree from Santa Clara University. She is an expert on landlord-tenant law and the coauthor of *Every Landlord's Legal Guide, Every Tenant's Legal Guide*, *Every Landlord's Guide to Finding Great Tenants, Renters' Rights: The Basics*, *Leases & Rental Agreements,* and *Negotiate the Best Lease for Your Business*.

J. Scott Weaver, an attorney and coauthor of the twentieth edition of *California Tenants' Rights*, has been a San Francisco tenant and housing activist for over 40 years. He's spent the last 30 years exclusively representing San Francisco Bay Area tenants. Scott has litigated several hundred tenant cases involving eviction, wrongful eviction, and habitability issues (including mold, asbestos, and bedbugs), and has brought tenant class action lawsuits. He has taught landlord tenant law at various legal education seminars.

Table of Contents

Appendixes

California Tenants' Rights: Your Legal Companion

What do you do when your landlord refuses to fix the leaky roof, reneges on a promised parking space, or threatens you with eviction? You might be merely annoyed by the discomfort or inconvenience, or intimidated by the fear of losing your home, but in any case you're probably unsure of your rights under the law. This book is the answer.

Tenant Rights and Responsibilities

California tenants enjoy some of the most innovative and thoughtful landlord-tenant protections in the country, but to take advantage of them, you need to know what they are. Here you'll learn the bottom line on your rights as a renter, including privacy, adequate notice of rent increases and terminations, repairs, fair housing, antiretaliation protection, security deposits, and more.

Armed with the information in this book, you can confidently negotiate with your landlord when you sign a lease or rental agreement, knowing what's what in the way of permissible lease terms. Later, as your tenancy continues, you'll know what you can legally expect from the landlord—and how to enforce your rights if you need to.

You'll learn about your responsibilities, too. For example, if your landlord won't perform important repairs, you have the right to withhold rent payments —but only if you're current on the rent. If you don't understand your legal responsibilities, you might lose out on the legal remedies at your disposal.

Eviction Defense in California

The second half of this book is devoted to eviction defense, which will help you if you've been handed a termination notice and have to decide—quickly—what to do next. Should you fight the eviction or just move out? It's not always an easy decision, and there's always emotion involved.

Even if you win, the toll on your time, energy, and wallet will be significant. And winning is never a sure thing, even if you're sure you have a solid legal defense and can prove it. All bets are off once you turn your fate over to a judge or jury. If you lose, you'll have an eviction on your record, which may make it very hard to rent another place to live. It's not illegal for landlords to flatly refuse to rent to people who have ever been evicted, and many do just that.

If you do decide to fight the eviction, we'll guide you through the court process. We provide samples of the official forms, explain how to fill them out, and tell you where to file them. Having represented countless tenants in court, we'll share with you the benefit of our experience, from where to stand to what to say—and not say.

Rent Control

If you live in one of the California cities (there are about 15) that offer tenants the benefits of rent control or eviction defense ordinances, you're lucky—you have greater rights than people who rent elsewhere in the Golden State. For example, many rent control ordinances require landlords to pay interest on security deposits, though state law does not. You'll find helpful summaries of these local laws, along with information on how to find the ordinances themselves online (they change frequently) and how to contact the agencies in charge of enforcing them.

Legal Forms, Letters, and Checklists for California Tenants

This book includes dozens of legal forms, sample letters, notices, and checklists to help you through the entire rental process, from move-in to move-out. Each form is easy to customize for your particular situation. There are clear instructions and filled-in samples in the text, and you'll find copies of the key forms in Appendix C; they are

also available for download on the Nolo website on a special companion page for this book (see below for details).

Many of the forms in this book were prepared by Nolo attorney-authors. We also include (where appropriate) some official California court forms (used in evictions), published by the Judicial Council of California.

Using the forms, checklists, and notices included in this book will help you avoid legal problems in the first place, and minimize those that can't be avoided. The key is to establish a good paper trail for all communications with your landlord, such as repair request forms. Such documentation is often legally required (for example, if you are withholding rent) and will be extremely valuable if attempts at resolving disputes with your landlord fail.

CAUTION

Who shouldn't use this book? Do not use this book for the following types of rentals:

Commercial property. Legal rules and practices vary widely for commercial rentals—from how rent is set to the length and terms of leases.

Space or a unit in a mobile home park or marina. Different rules often apply. For details, check out the California Department of Housing and Community Development publication, *2012 Mobilehome Residency Law*, available at www.hcd.ca.gov/codes/mp/2012MRL.pdf

A live/work unit (such as a loft). While you will be subject to state laws governing residential units, there may be additional requirements (imposed by building codes) that pertain to commercial property as well. Check with your local building inspector's office for the rules governing live/work units.

If you are a tenant in government-subsidized or -owned housing, such as "Section 8," your lease may contain terms required by the government, which neither you nor your landlord can change.

Tenants who lease a home in a condominium complex are generally on the same legal footing as those who rent single-family homes, which means this book will apply to them. However, condo tenants are also subject to the condominium's operating rules and regulations (known as "CC&Rs"), which may impose obligations or restrictions on tenants and landlords in addition to those found under state, local, and federal law.

Guide to Abbreviations Used in This Book

We use these standard abbreviations throughout this book for important statutes and court cases covering tenants' rights under California and federal law. There may be times when you will want to refer to the complete statute or case. (See Chapter 18 for advice on how to find a specific statute or case and do legal research.)

California Codes	
B&P	Business and Professions
CC	Civil
CCP	Civil Procedure
UHC	Uniform Housing Code
H&S	Health and Safety
CCR	California Code of Regulations
Federal Laws	
U.S.C.	United States Code
C.F.R.	Code of Federal Regulations
Cases	
Cal.App.	California Court of Appeal
Cal.Rptr.	California Court of Appeal and California Supreme Court
Cal.	California Supreme Court
N.J. Spr.	New Jersey Superior Court Reports
A. or A.2d	Atlantic Reporter
S.E. or S.E.2d	South Eastern Reporter
F. Supp.	United States District Court
F.2d	United States Court of Appeal
U.S.	United States Supreme Court
Opinions	
Ops. Cal. Atty. Gen.	California Attorney General Opinions

Get Updates, Forms, and More at This Book's Companion Page on Nolo.com

You can download the eviction and other forms (as well as the sample letters) in this book at:

www.nolo.com/back-of-book/CTEN.html

When there are important changes to the information in this book, we'll post updates on this same dedicated page (what we call the book's companion page). You'll find other useful information on this page, too, such as author blogs, podcasts, and videos. See Appendix C for a complete list of forms on nolo.com. See Appendix B for advice on downloading forms from the Nolo website.

CHAPTER

1

Looking for a Place and Renting It

Looking for a house or apartment to rent is often a frustrating and time-consuming task. Since it is human nature to become harried and frazzled under pressure, many mistakes are made at this stage that later turn out to be costly, both in time and money. Try to stay cool.

Get Organized and Set Your Rental Priorities

Before you start looking for a place, make a list of your housing needs and priorities, including:

- how much you can afford to pay
- what your space and living needs are
- how long you plan on staying, and
- what sort of area you want to live in.

Be realistic both as to your budget and as to what is available, and set definite guidelines in advance. If you can't find a place that meets your guidelines, don't change them without taking time to think the matter over carefully. Some of the worst and most costly mistakes are made by people who sign a lease or put down a deposit at the end of a long, frustrating day only to realize later that the place is unsuitable.

It is extremely important that you keep good records. As part of your getting organized, get a large manila envelope or file folder in which to keep all papers having to do with your rental transaction. Misplacing and losing papers (deposit agreements, leases, rent receipts, and so on) is a common mistake that should be avoided. Your landlord is in business and has probably learned how not to make such basic mistakes, so you should do the same. Set up a safe place in which to save your papers, receipts, canceled checks, and anything else that you think might possibly be important at a later time.

Here are examples of items to consider when choosing an apartment or other rental:

Price range: Jot down how much you can afford to spend on rent, including utilities.

Location: If you know what city or neighborhood you want to live in, list it. If you want to live close to a skiing, hiking, or surfing site, note that also. Be as specific as possible about where you want to live.

Rooms and interior features: Note the number, sizes, and types of rooms you want. List the number of bedrooms and bathrooms, as well as their specific features. For example, if you must have two bathrooms, specify whether you need two full bathrooms or one full and one half. List any other rooms you'd like, such as a separate dining room, a family room, a finished basement, a separate home office, or a space for your washer and dryer. Be as detailed as possible about your housing needs. If sunny rooms, air conditioning, a modern kitchen, and lots of storage are important, include them on your list. You might also be concerned about noisy neighbors. Ask the landlord or manager if there have been complaints about the neighbors.

Security: Depending on the crime rate in the area you are looking at, you may want to rent in a building with a front gate security system. This type of system allows you to screen visitors at the front gate to the building before they actually get to the front door of your residence.

Pets: If you own a dog, cat, or other pet, you will want to find out whether the landlord allows pets.

Yard and exterior features: If you like to garden or need a yard for your dog, put this on your list along with details on the size or type of yard.

Parking: Parking can be a critical consideration if you are planning to live in a city. Write down how many motor vehicles you have and what type of parking you will need, such as garage parking or easy street parking with no restrictions. The crime and vandalism rate in your area will also determine what kind of parking you want.

Neighborhood features: This category covers a lot and should be considered carefully. Neighborhood features you may be concerned about include low crime rates; walking distance to book stores, shops, or parks; low-traffic streets; lots of families with small children; quiet neighborhoods; limited access communities; or senior citizen housing. If you have

or plan to have school-age children, the proximity to and the quality of local schools will be very important considerations.

Work or school commute: Consider the maximum times and distances you are willing to travel to and from work or school by car or public transit. If you want to walk or bike to work or school, note that here. If you want to commute by public transit, check out the nearest bus or train stops and lines.

Once you have a list of your priorities, it's time to start looking. Craigslist will usually be your best resource, but also get leads from people you know who live or work near where you want to live. Also, walk the neighborhoods that interest you and look for "Apartment for Rent" signs. Other good resources include local real estate offices and property management firms that handle rentals in the area, and college housing offices or alumni.

Learn About Leases and Rental Agreements

Before you start looking for a place, you should know a little about rental agreements. First—the most important rule—don't sign any papers until you understand what's in them, or you may regret it later!

Landlords rent their properties using one of these methods:

- a written lease
- a written rental agreement, or
- an oral lease or rental agreement.

An oral lease or rental agreement is made without anything being written down—you just talk over what the deal is and agree to it. The other two, the written lease and the written rental agreement, have all the terms you agree to written down on a paper, which you and the landlord sign. Let's look at each in some detail.

Oral Agreements

It is perfectly legal to make a deal orally—that is, without writing anything down, and without signatures—as long as it covers a year or less. (If the oral agreement is for over a year, it is not enforceable by a court after the first year.) The landlord agrees to let you move in, and you agree to pay a certain amount of rent on some schedule, like weekly, every other week, or every month.

The oral agreement has some advantages: It is relatively informal, and you aren't subjected to the long list of terms and rules contained in most written leases and rental contracts. However, if you want the clarity of having everything written down, you will probably want your deal in writing.

As time goes by and circumstances change, people's memories can change, too. Then, if something goes wrong, both sides end up in front of a judge who has to decide whose recollection of the agreement to believe. For this reason, even if you make an oral agreement, it is wise to get some of the landlord's promises in writing. For example, if your landlord promises to make specific repairs, allow you to have a pet, or do anything else that you want to make sure the landlord remembers, write it down and have the landlord date and sign it.

If a landlord will not put agreements in writing, the next best thing is to write a confirmation letter or email. Memories sometimes fade with time, and a confirmation letter will help clarify what was said. At the same time, it documents the promise, in ways that may become important later. An example is: "Dear Mr. Jones, It was a pleasure meeting with you today. Thank you for accepting me as a tenant and agreeing to install a washing machine in the laundry room before I move in next month. I am excited about moving into this house."

Now, suppose the washing machine never shows up, and you want to sue for a reduction in rent, arguing that you're paying for a rental with a washing machine, but have not received it. If Mr. Jones does not dispute your version of the agreement (by writing back, for example), and fails to install the washer, your letter can be introduced in court as proof that the promise was indeed made, and was part of the reason you rented the place. (See Chapter 7 on how to get the landlord to follow through on promised repairs and improvements.)

Written Leases and Rental Agreements

The written lease and rental agreement are basically the same except for one important difference. The lease fixes all the terms of the agreement so that no changes can be made for a given period of time—most commonly, one year. If you rent under a lease, your rent cannot be raised until the lease runs out, nor can you be told to move unless you break the terms of the lease. You, too, are expected to perform your obligations under the lease (including rent payments) until it runs out.

The written rental agreement—often called a "month-to-month" agreement—has everything written down, just like the lease, but the time period of your tenancy is not fixed to a period beyond one month. The agreement self-renews every month until you or the landlord terminate it. This means that you can move out or your landlord can order you to move out on 30 days' notice, (increased to 60 days if you've lived there for a year or more). And if you're renting under a government-subsidized program, you're entitled to 90 days' notice before the landlord can terminate your tenancy.

For rent increases, 30 days' notice is required, but if your landlord raises the rent more than 10% of the lowest rent charged within the previous 12 months, the landlord must give you 60 days' notice. (See "Rent Increase Notices" in Chapter 3 for a full explanation of these rules.) Also, in certain communities that have rent control laws (and a few that don't), landlords must show "just cause" to evict. (See Appendix A for a list of cities with just cause eviction provisions.)

Except for these very important differences, leases and written rental agreements are so much alike that they are sometimes hard to tell apart. Both of them cover the basic terms of rental (names, addresses, amount of rent and date due, deposits, and so on), and both of them tend to have a lot of other fine-print provisions to protect the landlord.

Rent Control and Eviction Protections

If you are looking for a long-term situation, you might want to consider moving to a nearby city that has rent control.

Many cities in California have sets of laws that provide greater protections than state law. Typically, cities with rent control ordinances have limits on the amount by which a landlord can increase your rent. Most, but not all, of these ordinances also have "just cause" for eviction protections. Under these protections, a landlord may evict only for certain specified reasons (such as nonpayment of rent, or so that the owner or a close relative can move into the unit). Finally, a few jurisdictions, such as San Diego, have "just cause" for eviction protections but no controls on rents. (See Appendix A for a list of cities that have rent control and eviction protections and summaries of each city's provisions.)

Even if you move to a rent control city, the property may be "exempt" (excluded) from rent control. For example, single family homes are exempt from rent control everywhere in California; so is most new construction.

Be careful! Since they look so much alike, some forms can look like a lease, and sound like a lease, and even cover a year's period, but if they contain a provision that rent can be raised or that the agreement can be terminated on 30 days' notice (or 60 days for tenants who have been in the rental for a year or more and 90 days for subsidized tenancies), then they are really only written rental agreements.

Read it carefully! It is crucial that you read the entire lease or rental agreement and understand it before you sign it. If the main document refers to another document such as "house rules," make sure you read a copy of these, too. If there is any part of the written document that you don't understand, get advice—but not from the people who want you to sign it. If you want your rights protected, you will have to see to it yourself.

Legally, a written agreement can be typed or written down in longhand on any kind of paper, in any words, so long as the terms are legible. However, as a practical matter, nearly all landlords use standard printed forms that they buy in stationery stores or get from landlord associations. These forms have been prepared by lawyers or real estate associations, and they are usually as favorable as possible to the landlord. These forms need not look like death certificates, nor read like acts of Congress, but such is often the case. Some of the worst ones include clauses requiring you to waive your privacy, accept shorter-than-normal notice periods for rent increases and termination, accept responsibility for fixing things that should be handled by your landlord, and generally leave you in a very vulnerable position. We discuss the common provisions and tell you some things to watch out for below.

If the lease offered to you by the prospective landlord is not satisfactory, it is legal and simple to change it if both parties can agree on the changes. All you do is cross out unwanted portions, write in desired changes, and have all parties who are going to sign the document initial the changes. Make sure that you sign the lease at the same time as the landlord, and that you get a copy then and there. This assures both sides that no changes can be made after only one party has signed.

FORM

You'll find copies of the California-specific fixed-term lease and rental agreement forms in Appendix C, and the Nolo website includes downloadable copies of these forms (see Appendix B for the link to these forms). If your landlord doesn't have a written rental agreement, or proposes using a substandard one, use one of our forms instead. They are fair to both landlord and tenant. The only clause that is different in the month-to-month rental agreement is the term of the tenancy (Clause 4). *The California Landlord's Law Book: Rights and Responsibilities*, by David Brown, Ralph Warner, and Janet Portman (Nolo), includes these same forms, but with complete instructions. Online versions of California leases and rental agreements are also available at www.nolo.com.

Foreign Language Note on California Leases and Rental Agreements

If a written lease or month-to-month rental agreement is negotiated primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean, then the landlord must give the tenant a written translation of the lease or rental agreement before it is signed. The only exception is if the tenant provides his or her own interpreter, who can fluently read and write English and the foreign language, and who is not a minor. (CC § 1632.)

Which Is Better, a Lease or a Month-to-Month Rental Agreement?

If you have a lease for a substantial term, like a year or more, you are assured that the landlord cannot end your tenancy or raise the rent so long as you pay your rent on time and meet your other obligations under the lease and the law. This kind of security is extremely valuable where housing is hard to find and rents are rising.

If your unit is covered by a local rent control and eviction control ordinance, your need for the protection that a lease provides is lessened. Nevertheless, such ordinances do allow some rent increases, and they usually allow the landlord to evict in order to move himself or a relative into the place. A lease will normally protect you against these dangers.

Of course, if you expect to be moving in a very short time, you may prefer a month-to-month rental agreement, so that you can leave simply by giving 30 days' notice. But don't be too sure that a month-to-month tenancy is what you want. If you're in a tight rental market, it is usually not difficult to "break" a lease if you have to. We discuss this possibility in Chapter 12. Basically, the rule is that if you have a lease and move out before the term is up, the landlord can sue you for the rent until the lease runs out, but must make a reasonable effort to

find another tenant. Once a new tenant moves in, your responsibility for the rent ends.

If you prefer a lease, but are worried about some specific event that might force you to leave the area, consider simply providing for that event in the lease. If your boss might transfer you to Phoenix, put a provision in your lease saying, "Tenant may terminate this lease upon 30 days' written notice, provided that, with such notice, Tenant also gives Landlord a copy of a note from Tenant's employer saying that Tenant is being transferred to a location out of the city."

The written rental agreement is often preferred by landlords. It gives them the right to raise the rent as often as they wish (unless there is a local rent regulation ordinance) and to get rid of tenants that they don't like. In most cases, from a tenant's point of view, the written rental agreement does not have the advantages of a lease.

Typical Provisions in Leases and Rental Agreements

Your lease or rental agreement may be as short as one page or longer than ten. It may be typed or handwritten, easy to understand, or full of legalese. Most landlords use preprinted forms they buy in stationery stores, order from a landlords' association, or find in a software program.

Most leases and rental agreements contain "the usual suspects" of rental provisions or clauses. You'll often see them as numbered paragraphs. Unfortunately, the provisions are often dressed up in fancy legal language or buried in gargantuan sentences. This section offers plain meanings for the most common terms you'll find in a lease.

Names and Addresses of Landlord and Tenants

The tenant may be referred to as the "lessee" and the landlord as the "lessor." They may also be called the "parties" to the agreement. If a property manager or company is authorized to receive notices and legal papers on the landlord's behalf, you should also see that name and address.

Learning the Name of the Owner and Manager (If Any)

State law (CC §§ 1962 and 1962.5) provides that the rental agreement must state the name, phone number, and address of both the manager and the owner (or person authorized by the owner to receive notices, demands, and lawsuits against the owner). The rental agreement must also state when, where, and to whom rent is to be paid, and the form of payment, such as check, money order, or cash. Even if every other aspect of the lease or rental agreement is reflected in an oral agreement, the landlord must write down the above information and give it to the tenant.

Instead of putting this information in each rental agreement, the owner may choose to post notices containing the same information in the building. A notice must be posted in at least two easy-to-see places (including all elevators).

The owner must keep this information current. An owner who fails to follow this law may not evict for nonpayment of any rent that comes due during any period of noncompliance (see Chapter 14 for details). Also, the person who rented the dwelling for the owner automatically becomes his or her agent for receiving notices, demands, and lawsuits.

Landlords typically want all adults who will live in the premises, including both members of a couple, to sign the lease or rental agreement. Doing this makes everyone who signs responsible for all terms, including the full amount of the rent. To remind tenants of this rule, many leases and rental agreements state that all tenants are "jointly and severally" liable for paying rent and abiding by terms of the agreement. This means that the misdeeds of one tenant (such as keeping a pet in violation of a no-pets policy) will allow the landlord to evict all of you.

Chapter 2 provides details on the legal responsibilities of tenants and cotenants and related issues such as adding a new roommate. "Families With Children and Overcrowding" in Chapter 4, discusses occupancy limits that may restrict who lives in the rental unit.

Rental Property Address and Details

The property address is often called "the premises." Your lease or rental agreement may also include details on any furnishings, parking space, storage areas, or other extras that come with the rental property.

Term of the Tenancy

The term is the length of the rental. The document should include the beginning date and whether it's a month-to-month tenancy or a lease. If it's a lease, the ending date should also be specified. Leases often have a term of one year. The important differences between leases and rental agreements are discussed above. Chapter 14 explains how tenancies end.

Rent

Leases and rental agreements usually specify the amount of rent due each month, when and where it's due, acceptable forms of payment, and late fees. Chapter 3 covers rent rules in detail.

Deposits and Fees

Expect to see details on the dollar amount of a security deposit and/or last month's rent. Chapter 13 explains state laws that govern the use and return of security deposits and why it's important to know your landlord's cleaning and maintenance requirements.

Utilities

The landlord should state who pays for what utilities. Normally, landlords of multiple-unit properties pay for garbage and for water. Landlords of single-unit properties, such as a rental house, often pay for water if there is a yard. Tenants usually pay for other services, such as phone, gas, and electricity. If tenants will share gas or electric meters (where, for example, a tenant's meter also services a common area, or where one meter measures more than one rental's use), the rental document must disclose this, and how charges will be allocated. (CC § 1940.9.)

Inspect Before You Sign

Always inspect the rental unit before you sign a lease or rental agreement. Think (and look) carefully before signing off on a clause that states that the rental is in fine shape. Look for damage, dirt, mildew, pest or rodent problems, and obvious wear and tear. Write down (be as specific as possible) both serious problems, such as a broken heater or leaking roof, and minor flaws such as a stained kitchen counter, dirty drapes, or faded paint. Back up your written statement with photographs. (See "How to Check a Place Over," below, for specific advice.)

As much as possible, try to get your landlord to fix problems before you move in. Write down any agreement in a letter of understanding as described in "Get All Promises in Writing," below.

Keeping tabs on the condition of the rental at move-in is an excellent way to protect yourself when it comes time to move out and get your security deposit returned. Without good proof of the condition of the premises at the start of the tenancy, your landlord may keep all or part of your deposit, claiming you left the place filthy or damaged it—for example, stained the rug, cracked the bathroom mirror, or left behind a broken garbage disposal. Your initial inspection (and photos) will establish that the problems existed at the start of the tenancy and are not your fault. Chapter 13 discusses how to avoid disputes over security deposits at move-out time.

Condition of the Rental Unit

Most leases and rental agreements include a clause in which you agree that the premises are in habitable (livable) condition and you promise to alert the landlord to any defective or dangerous condition. Chapters 6 and 7 cover tenants' important rights and responsibilities regarding repair and maintenance.

Tenant's Repair and Maintenance Responsibilities

A carefully written lease or rental agreement will include a statement that makes you responsible for keeping the rental premises clean and in good condition and obligates you to reimburse the landlord for the cost of repairing damage caused by your abuse or neglect. Many leases and rental agreements also tell you what you can't do in the way of repairs—such as painting walls or adding built-in bookshelves without the landlord's permission. Chapters 5 and 6 cover the rights and responsibilities of landlords and tenants regarding repairs and maintenance, and your options if your landlord fails to provide habitable housing.

Your lease or rental agreement may require you to carry renters' insurance to cover damage and other losses to the rental. (See Chapter 16 for details.)

When and How Landlords May Enter Your Rental Unit

California law specifies when landlords may legally enter rented premises—for example, to deal with an emergency or make repairs—and the amount of notice required. (CC §§ 1942.1, 1953.) Some landlords include this information in the lease or rental agreement. But it's not unusual to find leases with entry provisions that are illegal. Chapter 5 covers the landlord's right to enter rental property and tenant privacy rights.

Extended Absences

Some leases and rental agreements require you to notify the landlord in advance if you will be away from the premises for a certain number of consecutive days (often seven or more). Such clauses may give the landlord the right to enter the rental unit during your absence to maintain the property as necessary and to inspect for damage and needed repairs. You'll most often see this type of clause if you live in a cold-weather place where, in case of extremely cold temperatures, landlords want to drain the pipes to guard against breakage.

Limits on Your Behavior

Most form leases and rental agreements contain a clause forbidding you from using the premises or adjacent areas, such as the sidewalk in front of the building, in such a way as to violate any law or ordinance, including laws prohibiting the use, possession, or sale of illegal drugs. These clauses also prohibit you from intentionally damaging the property or creating a nuisance by annoying or disturbing other tenants or nearby residents—for example, by continuously making loud noise. Leases and rental agreements may prohibit smoking, in individual units as well as in common areas. Landlords often impose "house rules" that govern noise, proper trash removal, and so on.

Rules on Number of Occupants

Landlords in California are free to advertise their rentals as appropriate for specific numbers of residents, but they do not have complete *carte blanche*. They may not fill their units to the point that they've created overcrowding. And at the other end of the spectrum, they cannot adopt policies that have the effect of discriminating against families. Let's look at each of these situations.

- **Overcrowding (minimum square foot requirements).** The Uniform Housing Code (the UHC) is part of California's state housing law and is intended to prevent the unhealthy and dangerous results of overcrowding. (H&S § 17922(a)(1).) The UHC addresses the question of occupancy in terms of the size of the rental's bedrooms. A room that the landlord has "designed or intended" to be used as a bedroom (CC § 1941.2(a)(5)) must be at least 70 square feet for one person, plus an additional 50 square feet for each additional occupant; so, for two people, 120 square feet; and three people, 170 square feet. (UHC § 503.) Cities are free to adopt their own occupancy specifications, and some (notably San Francisco) have allowed for more occupants per bedroom. In some rent control jurisdictions, tenants are allowed to add relatives and roommates up to a certain limit.
- **Discrimination against families.** Many landlords, hoping for reduced wear and tear, would like to rent to adults only, and the fewer, the better. They set "occupancy standards" that require specific numbers of bedrooms per occupant, which makes it difficult for families to rent. For example, insisting on only two occupants per bedroom rules out a one-bedroom unit for a couple with a child; similarly, a two-bedroom would be out of reach for a couple with three kids. Such policies are almost always illegal—in most cases, landlords must apply an occupancy policy of "two per bedroom plus one."

With these understandings in mind, look for an occupancy clause in your lease. If it's a one-bedroom and the lease forbids more than two occupants, it's likely an unenforceable clause. If it's a two-bedroom that specifies that no more than five residents may live there, it's likely to pass legal muster.

Restrictions on Use of the Property

Landlords may throw in all kinds of language limiting your use of the rental property and who may stay there. These may be minor (for example, no plants on wood floors or bikes in the hallway) or quite annoying. These may be in a separate set of rules and regulations or individual clauses. Basically, your landlords can set any kind of restriction they want, as long as it's not discriminatory or retaliatory or otherwise violates state law. Landlords are allowed to restrict or even prohibit smoking in part of or even all of the premises. (CC § 1947.5.) Other common restrictions involving pets, home businesses, sublets, and guests are discussed below.

Opening Landlords' Doors to Pets

The San Francisco Society for the Prevention of Cruelty to Animals (SPCA) offers pet-owning tenants helpful materials on how to negotiate with a landlord. The SPCA also offers landlords:

- checklists to help screen pet-owning tenants
- model policies for tenants with dogs or cats
- model agreements to add to standard leases and rental agreements, and
- free mediation if landlords and tenants have problems after moving in.

For more information, contact the San Francisco SPCA at 201 Alabama, San Francisco, CA 94103, 415-554-3000, or check their website at www.sfspca.org.

No Pets

Your landlord has the right to prohibit all pets, or to restrict the types allowed—for example, forbidding dogs or cats, but allowing birds. However, a landlord may not prohibit "service" or "comfort" animals used by physically or mentally disabled people, as provided by the fair housing laws. (For more information, see Chapter 4,

"Discrimination.") Many landlords spell out pet rules—for example, that the tenants will keep the yard free of all animal waste or that dogs will always be on leash.

Landlords may not charge a nonrefundable pet fee. (See the discussions of deposits in Chapter 13.)

No Home Businesses

Landlords may prohibit you from running a business from your home, by including a clause specifying that the premises are "for residential purposes only." The concern here is generally about increased traffic and liability exposure if one of your customers or business associates is hurt on the premises. Obviously, working at home on your computer is not likely to bother your landlord, and may not even be noticed.

If you want to run a day care operation in your rented home, your landlord cannot flatly prohibit it. (H&S § 1597.40.) You must be licensed, and part of that process will involve an on-site inspection, to determine whether the physical space comports with minimum requirements under state law. (See "Family Day Care Homes," below.)

No Assignments or Sublets Without Landlord Permission

Most careful landlords will not let you turn your rental over to another tenant (called "assignment"), let someone live there for a limited time while you're away (called a "sublet"), or let you rent an extra bedroom to another occupant, with you as the "landlord" (also called a sublet), without their written consent. (However, consent cannot be withheld without a good reason.) (See Chapter 12 for more on the subject.)

Limits on Guest Stays

It's common for landlords to limit overnight guests, such as allowing a guest for no more than ten days in any six-month period, with written approval required for longer stays. Landlords do this to keep long-term guests from gaining the status of full-fledged tenants who have not been screened or approved and who have not signed the lease or rental agreement.

Prohibitions against short-term rentals ("Airbnb")

Short-term rental websites and services such as Airbnb have become very popular in California, particularly in tourist-destination cities such as San Francisco and Santa Monica. Landlords universally hate the practice—from their point of view, the tenant has simply turned the rental into a hotel, making money off the landlord's property and introducing added wear and tear, annoyance from neighbors, and the risk that unscreened occupants will cause trouble. Arguably, a general "no subletting or assigning without permission" clause would cover and prohibit the situation, but to be sure, landlords have begun inserting clauses in their rental agreements and leases that specifically address the practice and forbid it, warning that a breach can lead to eviction.

Such a clause is probably legal and enforceable, even in cities whose own ordinances attempt to govern the practice (no such ordinance *requires* landlords to allow short-term renting). If you see such a clause in your lease, think twice before listing your rental. You may find that your "guest" is none other than your vigilant landlord, who has found the listing just like any other visitor would.

Family Day Care Homes

Under state law (H&S § 1597.40), a landlord may not forbid a tenant's use of rental premises as a licensed family day care home. If you obtain a state license to run a family day care home, you may do so legally—regardless of whether your lease or rental agreement prohibits the operation of a business on the premises or limits the number of occupants. Local zoning and occupancy limits also don't apply to a state-licensed family day care home. If you want to run a family day care home, you must notify your landlord in writing of your intent, after having first obtained a state license, 30 days in advance of starting the child care operation.

Disclosures Required by Law

In addition to disclosures described here (under "Utilities" and "Megan's Law Database"), California requires landlords to make the following disclosures, either in the rental document or elsewhere:

- **Location near a former military base.** Landlords must tell you if the property is within a mile of an abandoned or closed military base in which ammunition or explosives were stored. (CC § 1940.7.)
- **Periodic and other pest control.** Landlords who have periodic pest control must inform tenants about the frequency of treatments. (CC § 1940.8.)
- **Intentions to demolish the rental.** If the landlord has applied for a demolition permit, it must inform tenants. (CC § 1940.6(a)(1)(D).)
- **Lead paint.** All landlords must give tenants the federal form, "Disclosure of Information on Lead-Based Paint or Lead-Based Paint Hazards," and inform tenants of the known presence of lead paint. (See Chapter 10 for details).
- **Mold.** Landlords who know of the presence of mold in a rental must inform tenants. (H&S § 26147.) (See Chapter 10 for more on mold.)

Megan's Law Database

Every written lease or rental agreement must include a specific paragraph that tells tenants about the statewide database containing the names of registered sexual offenders. Members of the public may view the state's Department of Justice website to see whether a certain individual is on the list (www.meganslaw.ca.gov).

Attorney Fees and Court Costs in a Lawsuit

Many leases and rental agreements specify who will pay attorney fees if you go to court to enforce any provision of your rental agreement or lease—for example, a dispute about rent or security deposits. Landlords often write these clauses to run "one way." That is, the clause says a losing tenant will pay a winning landlord's fees and costs (but it doesn't say that a winning tenant will get paid by the landlord). The courts will nevertheless require the landlord to pay attorney fees if the tenant wins. (CC § 1717(a).)

You may get attorney fees if you successfully sue even if your lease does not have a "fees and costs" clause. Some California statutes provide for attorney fees to a prevailing party regardless of what is or is not in a rental agreement. (For example, actions for discrimination, retaliatory eviction, or rent control violations specify that the prevailing party can recover these costs.) (CC § 1717.)

Grounds for Termination of Tenancy

You'll often see a general clause stating that any violation of the lease or rental agreement by you, or by your guests, is grounds for terminating the tenancy according to the procedures established by state or local laws. Chapters 14 and 15 cover the legal rules regarding termination and evictions.

Lease Terms to Watch Out For

Some leases and rental agreements contain provisions that are illegal and therefore unenforceable. When it comes to these provisions, think about whether to use your bargaining power by trying to get the landlord to scratch them out. You may want to mention that these provisions are illegal, in order to show the landlord how one-sided the agreement is, and then ask the landlord to eliminate or change other (enforceable) provisions.

Provision That the Landlord Is Not Responsible for Damage and Injuries

This provision says that if the landlord is negligent in maintaining the place and you, your family, or

guests are injured, or your property is damaged (for example, if someone falls down broken stairs), the landlord is not responsible for paying for your losses. This is called an "exculpatory" provision. Under state law, such a provision is invalid. (CC § 1953.) Chapter 9 discusses landlord liability for tenant injuries.

Provision Making Tenant Responsible for Repairs

This provision requires you, the tenant, to repair or maintain the premises. Unless this is based on a legitimate reduction in rent, this type of provision is usually illegal. (CC § 1942.1.) In any event, this provision does not relieve the landlord of the legal obligation to see that the place complies with the housing codes and the duty to maintain a fit and habitable rental. (See Chapter 6 for more information.)

Provision Waiving Your Self-Help Repair Rights

California tenants have the right, in certain circumstances, to make necessary repairs and deduct the cost from the rent; and to withhold rent until the landlord accomplishes the repair (these remedies, known as "repair and deduct," and "rent withholding," are explained in detail in Chapter 6). A lease provision that purports to waive these rights will not be enforced by a judge.

Waiver of Rent Control Laws

Cities that have rent control ordinances specifically forbid lease or rental agreement provisions by which a tenant gives up or waives any rights granted by the rent control ordinance, such as rent ceilings or just cause eviction rules. A landlord who attempts to circumvent a rent control rule may be fined or even face criminal prosecution. Appendix A contains a detailed chart on rent control rules, and Chapter 3 provides an overview of the subject.

Waiver of Right to Legal Notice

This provision says the landlord can sue to evict you or can raise the rent or change the terms of the lease without giving notice (such as a three-day notice to pay your rent or vacate) required by law. It is not valid. (CC § 1953.)

Provision Setting Notice Period

This provision sets the amount of time the landlord must give you before a notice of termination or rent raise or change in terms becomes operative. We believe that under CC § 1946.1, this type of notice is not legally valid. If you are a month-to-month tenant, the law requires that the landlord give you at least 30 days' notice (60 days for a termination notice in the case of a tenant who has rented for a year or more). (See "Rent Increase Notices" in Chapter 3 for exceptions.)

Right to Inspect

Many forms have a provision that gives the landlord the right to come into your place to inspect it, or for other purposes. Under state law, the landlord's right to enter the dwelling is limited to certain reasons, and any attempt to add to these reasons in the lease or rental agreement is void. (CC §§ 1953 and 1954.) We discuss your rights to privacy in detail in Chapter 5.

Right of Reentry Provision

This provision permits the landlord to come in and throw you out if you don't pay the rent, without giving you legal notice or going to court. It is not valid. (CC § 1953(a)(4).)

Waiver of Jury Trial

One variation on this provision says that you waive your right to a trial by jury in any eviction lawsuit brought by the landlord. It is not valid. (CC § 1953.) Similarly, a lease clause in which

the tenant agrees that any lawsuit concerning the lease or its implementation will be tried before a judge without a jury is void. (*Grafton Partners LP v. Superior Court (PricewaterhouseCoopers LLP)*, 36 Cal.4th 944 (2005).)

Keep in mind that you and the landlord may still decide, once litigation has begun, that you will submit the case to a judge and not a jury. But an advance waiver of the right to a jury trial is not a legal option in California. Rental agreement provisions requiring the parties to arbitrate a dispute with a "neutral" third party are void under CC § 1953(a)(4). (*Jaramillo v. JH Real Estate Partners, Inc.* 111 Cal.App.4th 394 (2003).)

Waiver of Right to Appeal

This provision prevents you from appealing a court decision in any eviction lawsuit. It is not valid. (CC § 1953.)

Landlord's Attorney Fees

This provision usually says that if the landlord has to sue to evict you and is the "prevailing party," you will pay the landlord's attorney fees. This provision is valid, and the landlord usually cannot get attorney fees unless the lease or rental agreement has such a provision. Therefore, you may want to ask that it be deleted.

However, you should understand that whenever there is an attorney's fee provision in a lease or written rental agreement, the law says that the attorney's fee provision is reciprocal and entitles you to collect your attorney fees from the landlord if you win the lawsuit (in legalese, if you are the "prevailing party"), even if the provision does not say this. (CC § 1717(a).) For this reason, some tenants actually prefer to have an attorney fees clause—even a seemingly one-sided one—in their written agreement, feeling that if their landlord seriously violates a provision of the agreement and they have to sue, they want to be able to collect their attorney fees.

If the case is dismissed or settles, the law considers that there is no "prevailing party," and no one gets attorney fees. When you consider how many cases settle before trial, the comfort of the two-way attorney fees law seems rather lukewarm, and it is something to keep in mind when negotiating your lease.

Late Charges

This provision requires the tenant to pay a "late charge" if the rent is paid late. The charge may be set as a percentage of the rent (such as 4%), a flat charge (such as $10), or a flat charge per day (such as $5 each day the rent is late). (See "Late Fees" in Chapter 3.) This provision will probably survive a court challenge if the amount is a reasonable estimate of the amount the lateness of your payment will cost the landlord—that is, the administrative cost of processing the late payment and the loss of interest on your rent. However, if the charge is so high as to penalize you for being late, the charge is probably a "penalty" provision, which is invalid. If the late charge seems suspiciously high to you (for example, a $100 charge on an $800 rent payment late by a few days), ask the landlord to justify it or lower it.

Restrictions on Occupants and Guests

Restrictions on the number of occupants and the length of time guests may stay are common in leases and rental agreements. These are valid so long as they are not discriminatory. The landlord has legitimate interests in seeing that the number of occupants does not get so high that there would be excessive wear on the rental, common areas, and facilities. The landlord also has a legitimate interest in ensuring that new occupants and guests will not be obnoxious people who might disturb other tenants or wreck the place.

These restrictions may not, however, be based on the age, sex, or gender of the occupant or guest or on a tenant having children. A provision forbidding any overnight guests of the opposite sex of the tenant, for example, is illegal. (CC § 51. See also *Atkisson v. Kern County Housing Authority,* 59 Cal.

App.3d 89 (1976).) So would a provision saying, "No overnight guests under 12 years of age." (CC § 51. See also *Marina Point, Ltd. v. Wolfson,* 30 Cal.3d 721 (1982) and "Families With Children and Overcrowding" in Chapter 4.)

A landlord must also be reasonable if you become disabled and need an additional person in your home to take care of you, when that person would put you above the occupancy limit. In legalese, the landlord must make a "reasonable accommodation" for you, and vary his policy. For example, suppose you've had surgery and are incapacitated for a period of time; or you become unable to care for yourself due to age or infirmity. You must, however, request the "reasonable accommodation" before allowing the guest or occupant to stay for any period beyond what is allowed in the lease agreement. (See Chapter 4, "Discrimination," for more on requesting reasonable accommodations.)

Some agreements require the tenant to give the landlord prior notice of overnight guests, or to obtain the landlord's prior consent. These provisions are probably valid, though a provision regarding consent would probably be read to mean that the landlord could not arbitrarily or unreasonably withhold consent. These provisions can be annoying, however, as they allow the landlord to nose into the tenant's private affairs. You might ask the landlord to write in something like, "This restriction shall apply only to overnight guests who stay more than five nights in any 30-day period."

Requiring the Tenant to Give Notice on a Specific Day

Some landlords want month-to-month tenants to give tenancy termination notices on a specific day of the month, typically the last day. Under this scheme, a termination notice delivered on any other day won't take effect until the last day of the month, which means that a tenant who gives a 30-day notice on, say, the tenth, will in effect be giving 50 days' notice (because the landlord won't recognize it until the 30th of that month). The tenant can, of course, vacate at any time, but the landlord will argue that it is entitled to rent for the entire 50-day period. Typically, the landlord will deduct the unpaid rent from the security deposit.

State law requires that a tenant give only 30 days' notice to end a tenancy, no more. (CC § 1946.1.) Therefore, any provision requiring notice on the first of the month should be unenforceable, and the landlord should not be able to deduct rent for the extra 20 days.

Provision Restricting Water-Filled Furniture

If the building where you rent was built after 1973, it is not legal for a landlord to ban water-filled furniture. A landlord may, however, require you to have $100,000 of liability insurance to cover potential damage and meet other requirements specified by law. (Chapter 15 discusses renters' insurance.) For property built before 1973, a landlord may legally refuse to allow waterbeds. (CC § 1940.5.)

Penalty and Liquidated Damages Provision

Occasionally, a lease includes a "penalty" or "liquidated damages" clause. These provisions are not necessarily labeled "penalty" or "liquidated damages," but they nevertheless have the effect of a penalty—one that bears no relation to the damage a landlord would actually suffer if the tenant breached the agreement. For instance, a clause may say that if you move out before the expiration of the lease, you have to pay a specified sum and/or forfeit your deposit. This is probably a penalty and unlawful under CC § 1671(d).

If you think that sounds unfair, you're right. As is discussed in Chapter 12, if you move out before your lease expires, you are legally responsible to pay the landlord only for the actual losses you cause. The landlord is legally obligated to minimize those losses by trying to find a new tenant to replace you

as soon as possible. Why should the landlord, who didn't lose any money when you moved out, get a windfall?

Courts don't look kindly on liquidated damages, either. If the amount of liquidated damages far exceeds the landlord's actual damages, a judge will probably rule that you don't have to pay them. Of course, it takes time and trouble to go to court to get your money (the security deposit) back, so it's better to get a clause like this crossed out of the lease before you sign it.

Cash Rent

Your lease or rental agreement may not demand that you pay the rent solely in cash or by electronic funds transfer. (CC § 1947.3.) Landlords may demand cash rent only after you've given them a check that bounces, or a money order or cashier's check whose issuer has been told to stop payment. Even then, the demand for cash rent may last only three months.

Holding Deposits and Credit-Check Fees

Almost every landlord requires the tenant to give a substantial security deposit, sometimes including "last month's rent." The laws concerning how much can be charged and when and how deposits must be accounted for are discussed in Chapter 13. Here we will discuss some other fees and deposits that are occasionally required.

Holding Deposit

Sometimes, making a deal with a landlord requires some type of cash deposit, then and there, to ensure you don't change your mind and back out of the deal. If you give the landlord the cash, sometimes as much as a month's rent, the landlord will "hold" the place for you until you bring your first month's rent and any deposits or fees you agreed on, or pending the result of a credit check. This is called a "holding" or "bond" deposit.

If you give a landlord a holding deposit and later decide not to take the place, you probably will be unable to get your whole deposit back. Therefore, be sure you really want the place before giving this kind of deposit. The law is very unclear as to what portion of a holding deposit a landlord can keep if a would-be tenant changes his mind about renting the property or doesn't come up with the remaining rent and deposit money. The basic rule is that a landlord can keep an amount that bears a "reasonable" relation to the landlord's costs—for example, for more advertising and for prorated rent during the time the property was held vacant. A landlord who keeps a larger amount is said to be imposing an unlawful penalty. Whatever you and the landlord agree on, such as your right to get half of the holding deposit back if you decide not to take the place within a certain number of days, be sure you get it in writing.

Also, be sure you and the landlord understand what will happen to the deposit when you take the place. Usually it will be applied to the first month's rent. To make this clear, have the landlord give you a receipt for the deposit, and write on the receipt what will happen to the deposit when you come back with the rent.

Credit-Check and Screening Fees

Landlords often charge a fee to check the credit and background of prospective tenants. But state law limits credit-check or application fees and specifies what landlords must do when accepting these types of screening fees from prospective tenants. Under CC § 1950.6, landlords can charge only "actual out-of-pocket" costs of obtaining a credit or similar tenant "screening" report, plus "the reasonable value of time spent" obtaining a credit report or checking personal references and background information on a prospective tenant.

Landlord-Tenant Agreement Regarding Tenant's Credit Information

Credit Information

Tenant authorizes Landlord to verify all credit information for the purpose of renting the premises at _____

_____ .

Landlord shall not release such information for any other purpose without the express written approval of the Tenant.

If Landlord does not agree to sign lease within _____ days of receiving a deposit from Tenant for the purpose of reserving the premises, the total application fee of $_____ shall be refunded to Tenant, less the amount actually spent to verify credit or background information.

Tenant may withdraw from the agreement and receive a refund of the total application fee (less an amount used to verify credit information) up until such time as Landlord signs the lease.

_____

Landlord

_____

Tenant

The maximum screening fee a landlord can charge is set by law. This figure ($45.99 through 2015) may be adjusted upward annually by the landlord based on the Consumer Price Index. (CC § 1950.6.) To determine the current allowable charge, go to the city of Berkeley's Rent Stabilization website (www.ci.berkeley.ca.us) and type "tenant application screening fee" in the search box. You'll get a list of articles, one of which will give the current allowable fee for all of California. (The notification is contained in the Berkeley Municipal Code § 13.78.010, Notification of state law limitation on tenant screening fees.)

Upon an applicant's request, a landlord must provide a copy of any consumer credit report that the landlord obtained on the individual. CC § 1950.6 also requires that the landlord give or mail applicants a receipt itemizing their credit-check and screening fees. If a landlord ends up spending less (for the credit report and time) than the fee charged the applicant, the landlord must refund the difference. (This may be the entire screening fee if the landlord never got a credit report or checked references on an applicant.)

Finally, landlords cannot charge any screening or credit-check fee if they don't have a vacancy and are simply putting someone on a waiting list (unless the applicant agrees to this in writing).

To avoid disputes over credit-check fees and the amount of time a landlord takes to check your credit and background, it is wise to sign a brief agreement with a landlord, authorizing the landlord to check your credit information, such as the one shown above.

Rental Applications and Credit Reports

You will probably be required to fill out a written rental application by the landlord or manager, and pay a credit-check fee (discussed above).

Rental Applications

The rental application will likely ask you for information regarding your employment, income, and credit history (including any bankruptcies), housing history (including evictions), as well as any criminal convictions. It's legal to ask for your Social Security, driver's license number, or other identifying information (such as an Individual Taxpayer Identification Number, or ITIN). Under California state law, it is illegal, however, for landlords to ask for proof of an applicant's right to be in the United States under U.S. immigration laws.

Landlords may also ask you for some references from your current and previous landlords, and others such as your employer. Make sure that all of your references are people who know you well and who have positive impressions of you. Enthusiastic employment references are a good choice.

Credit Reports

The most important part of the rental application is the credit check. If you have a poor credit record, be armed with information about yourself, showing that you will pay your rent despite what your credit record shows.

Several companies, called tenant-screening agencies, collect and sell credit and other information about tenants—for example, if they pay their rent on time or if they've ever been evicted. These reports go way beyond the information contained in a credit report. There is no public access, however, to unlawful detainer lawsuit records within the first 60 days of the filing of the complaint (newspapers, however, can petition the court for an exception to this rule on a case-by-case basis). (21 CCP § 1161.2(a).) And if you won an eviction lawsuit against you, the record of that lawsuit will be sealed 60 days after the judgment (applies to judgments in your favor entered on or after January 1, 2004). (CCP § 1161.2(e).) (Unfortunately, it is probably unrealistic to expect that a record that's disseminated to various online databases can ever be truly "sealed," however.) If asked to, these companies also will gather and sell "investigative reports" about a person's character, general reputation, personal characteristics, or mode of living.

Many landlords routinely request screening and credit reports on prospective tenants from these agencies. If a landlord does not rent, or charges higher rent, to someone because of negative information in a credit or screening report, the landlord must so notify the tenant and give the person the name and address of the agency that reported the negative information. The landlord must also tell applicants that they have a right to obtain a copy of the file from the agency that reported the negative information, as long as they request the file within 60 days. (CC § 1785.20.) Landlords must also tell you that the credit reporting agency did not make the rejection decision and cannot explain it; and that if you dispute the information in the report, you can provide a consumer statement for your file that sets forth your position.

Almost all background or investigative checks are considered "investigative consumer reports" under the federal Fair Credit Reporting Act. (15 U.S.C. §§ 1681 and following.) A landlord who requests a background check on a prospective tenant must:

- tell the applicant within three days of requesting the report that the report may be made; and that it will concern the applicant's character, reputation, personal characteristics, and criminal history, and
- tell the applicant that more information about the nature and scope of the report will be provided upon written request. The landlord must provide this additional information within five days of being asked by the applicant.

Free Credit Report

If you'd like to see a copy of your credit report, it's simple and cheap. The Federal Trade Commission (FTC) approved a rule that allows consumers to receive a free copy of their credit report every 12 months. Go to www.annualcreditreport.com. Because your credit report is so important, you should always check it before you start your housing search. This will give you the opportunity to correct or clear up any mistakes such as out-of-date or just plain wrong information.

TIP

If the landlord or manager checks your credit, you should be aware that the check will probably result in an "inquiry" in your credit record. An inquiry is an indication in your credit record that someone has asked for your credit record. Many inquiries within a short period of time may raise doubts about your creditworthiness later—a creditor may think you were shopping around and looking to borrow a lot. You may need to explain that the inquiries were from landlords, and you were merely shopping and bargaining for the best rental.

How Landlords Must Handle Your Credit Information

Landlords must take steps to safeguard and eventually destroy credit reports and any information they have that's derived from these reports. This "Disposal Rule" comes from the Federal Trade Commission (FTC), which issues rules that implement the Fair and Accurate Credit Transaction Act of 2003, 69 Fed. Reg. 68690 (the "FACT Act"). The rule applies to all businesses, even one-person landlords. You might want to ask your prospective landlord whether he or she follows the practices described below.

Safe Retention

Landlords should keep these reports in a secure location, in order to minimize the chance that someone will use the information for illegal purposes, including identity theft. Good practices include storing these reports, and any other documents that include information taken from them, in a locked cabinet. Only known and trusted people should have access, and only on a need-to-know basis. Reports stored on a computer, a BlackBerry, or similar device, or information derived from them, must also be kept secure.

Destroying Unneeded Reports Routinely

The FACT Act requires landlords to dispose of credit reports and any information taken from them when they no longer need them. Landlords may think they need these reports long after they've rejected or accepted an applicant—the reports may be essential in refuting a fair employment or housing claim. Under federal law, such claims must be filed within two years of the claimed discrimination. Landlords whose states gives plaintiffs extra time to sue may keep the records at least two years and longer.

Landlords should destroy old records using an effective destruction method. The Disposal Rule requires landlords to choose a level of document destruction that is reasonable in the context of their business. For example, a landlord with a few rentals would do just fine with an inexpensive shredder, but a multiproperty owner might want to contract with a shredding service. Computer files must also be erased, by deleting not only the directory, but the text as well.

Remedies When Landlords Willfully Disregard the Disposal Rule

The Disposal Rule comes with teeth for those who willfully disregard it—landlords who know about the law and how to comply, but deliberately refuse to do so. You can sue for your actual damages (say, the cost of covering a portion of a credit card's unauthorized use), or damages per violation of between $100 and $1,000, plus your attorney fees and costs of suit, plus punitive damages. The FTC and state counterparts can also enforce the FACT Act and impose fines.

Permissible Reasons for Rejecting Tenants

Federal and state antidiscrimination laws (covered in Chapter 4) limit what landlords can say and do in the tenant selection process. Basically, a landlord is legally free to choose among prospective tenants as long as all tenants are evaluated more or less equally. That said, a landlord is entitled to reject you for legitimate business reasons, such as your poor credit history, which leads the landlord to believe that you will be unable to pay the rent; negative references from previous landlords indicating problems, such as property damage or consistent late rent payments; and previous eviction lawsuits.

How to Check a Place Over

If you see a place that you think you will like, take a walk around the neighborhood. Check out stores,

schools, and bus stops. Walk around the building you are interested in renting and try to meet some of the neighbors. (If you can, talk to the tenants who are moving out.) Ask them how they have gotten along with the landlord. Make sure that you can feel at home in all respects. Take an especially close look at the condition of the unit you may rent. Look for dirt and damage, and carefully check all doors, windows, screens, stoves, furnaces, hot water heaters, and any other appliances. Make lists of any defects you find—later you can negotiate with the landlord for improvements and repairs. At the very least, be sure to get the landlord to sign an acknowledgment of the existing conditions, so she can't blame you later for causing them (and deducting from your security deposit accordingly). The best way to do this is by completing the Landlord-Tenant Checklist discussed below.

A Checklist of Things to Inspect

Here is a checklist of things you should look for when inspecting a place. All requirements mentioned are contained in the State Housing Law. (See Chapter 6.) While checking some items on this list may seem obvious almost to the point of being simple-minded, the unhappy truth is that many people do not check a rental unit thoroughly before moving in and have all sorts of trouble getting repairs made later. So please slow down and look carefully (and then look again) before you sign on the dotted line.

Check the STRUCTURE (Floors, Walls, Ceiling, Foundation)

The structure of the place must be weatherproof, waterproof, and rodent proof.

"Weatherproof" means there must be no holes, cracks, or broken plaster. Check to see if all the walls are flush (that they meet directly, with no space in between). See if any floorboards are warped. Does wall plaster fall off when you touch it?

"Waterproof" means no water should leak in. If you see dark round spots on the ceilings or dark streaks on the walls, rain water might have been leaking through.

"Rodent proof" means no cracks and holes that rats and mice could use.

Check the PLUMBING

The landlord must provide a plumbing system connected to your community's water system and also to its sewage system (unless you have a septic system).

All plumbing must be in good condition, free of rust and leaks. Sometimes the condition of the plumbing is hard to discover, but there are several tests you can run to see if there might be problems.

Flush the toilet. Does it take too long to flush? Does it leak on the floor? Is the water discolored? If so, the pipes may be rusty or unclean.

If the water is connected, fill a sink with hot and cold water. Turn the faucets on all the way, and listen for vibrating or knocking sounds in the pipes. See if the water in the sink is discolored. Drain the sink, and see if it takes too long for the water to run out.

Check the BATHROOM

The State Housing Law requires that every apartment and house have at least one working toilet, washbasin, and bathtub (or shower) in it. The toilet and bathtub (or shower) must be in a room that gives privacy to the occupant and is ventilated. All of these facilities must be installed and maintained in a safe and sanitary condition.

Check the KITCHEN

The State Housing Law requires that every apartment and house have a kitchen. The kitchen must have a kitchen sink, which cannot be made of wood or other absorbent material.

Check the HOT WATER

The landlord must see that you have both hot and cold running water (although he can require you to pay the water and gas bills). "Hot" water means a temperature of not less than 110 degrees F.

Check the HEAT

The landlord must provide adequate heating facilities. Unvented fuel-burning heaters are not permitted.

Check the LIGHT AND VENTILATION

All rooms you live in must have natural light through windows or skylights, which must have an area not less than one-tenth of the floor area of the room, with a minimum of ten square feet.

Hallways and stairs in the building must be lighted at all times.

Check for Signs of INSECTS, VERMIN, AND RODENTS

The landlord must provide facilities that prevent insect and rodent infestation and, if there is infestation, provide for extermination services.

These pests can be hard to notice. Remember, however, that they are very shy and stay out of sight. Therefore, if you see any fresh signs of them, they are probably very numerous and will bother you later on. Also, these pests travel from house to house. If your neighbors have them, they will probably get to you.

Check for rodent trails and excrement. Rats and mice travel the same path day after day and leave a gray coloring along the floor and baseboards. Look at the kitchen carefully, for rodents go there for food supplies. Check in closets and cupboards and behind appliances for cockroaches.

Check for possible breeding grounds for pests, such as nearby stagnant water or garages and basements with piles of litter or old couches.

Check the WIRING AND ELECTRICITY

Loose or exposed wiring can be dangerous, leading to shock or fires. The landlord must provide safe and proper wiring.

If electrical power is available in the area, the place must be connected to it. Every room you live in must have at least two outlets (or one outlet and one light fixture). Every bathroom must have at least one light fixture.

Check for FIRE SAFETY

The landlord must provide safe exits leading to a street or hallway. Hallways, stairways, and exits must be free from litter. State law requires landlords to provide information on emergency procedures in case of fire to tenants in multistory rental properties. (H&S § 13220.) Storage rooms, garages, and basements must not contain combustible materials. State law requires that all multiple-unit dwellings offered for rental be equipped with smoke detectors. (H&S § 13113.7.)

Check for CARBON MONOXIDE DETECTORS

Health and Safety Code §§ 17916 and 17926.1 require carbon monoxide detectors in all dwelling units. (See the "Carbon Monoxide" section of Chapter 10 for details on carbon monoxide concerns in rentals.)

Check for Adequate TRASH AND GARBAGE RECEPTACLES

The landlord must provide adequate garbage and trash storage and removal facilities. Garbage cans must have tight-fitting covers.

Check the General CLEANLINESS OF THE AREA

Landlords must keep those parts of the building that they control (hallways, stairs, yards, basement, driveway, and so on) in a clean, sanitary, and safe condition.

Check the LOCKS

Landlords must install deadbolts on swinging main entry doors, common area doors, and gates and certain windows. (See Chapter 11 for details.) (CC § 1941.3.)

Check for EARTHQUAKE SAFETY

A building's earthquake resistance is a very important consideration in deciding where you want to rent, yet few people even think about it. Because the law does not provide specific protection for

tenants living in unsafe buildings, you must be a wise shopper and ask the following specific questions about the building and its surroundings.

How Safe Is the Land Under the Building?

Proximity to a major fault is not the only factor you should consider when scoping out a place to rent. Be aware that:

- An unstable hillside is susceptible to landslides if an earthquake hits. The danger depends on the soil condition—rock is better than unconsolidated dirt. Flat, solid ground is best.
- The worst place for a building is on landfill. Fill is common along many California bays and rivers, including San Francisco Bay. In a quake with a lot of vigorous shaking, older fill and bay mud may liquefy.
- Don't rent a place that is downstream from a dam. Some dams could fail (leak or even break) in an extremely strong earthquake.

How Safe Is the Building Itself?

Ask the building's manager or owner these questions:

- Does the building have a steel or wood frame? Is it built from steel-reinforced concrete, or is it a concrete shear-wall building that is not irregularly shaped or does not have a "soft story"? These are usually safe buildings. Pay particular attention to buildings that have a ground-level garage. Solid shear walls that normally support that portion of the building during an earthquake are often removed to make way for garage doors or windows. The result is a building that is more likely to collapse onto that first floor in a major earthquake. Ask the manager or owner whether the walls of the garage (especially the front and back walls) have been strengthened with plywood sheathing. If they haven't been strengthened, know that you are taking a risk when you rent there.
- Is the building bolted to the foundation? If not, it can be shaken off of its foundation and severely damaged.
- Does the building have a lateral bracing system? If not, it will not be able to withstand the lateral forces of an earthquake.
- Is there plywood sheathing built around sliding glass doors, bay windows, or picture windows to decrease the risk of breakage?
- Does the building have a tile roof? Tile roofs are very heavy and may collapse during an earthquake. However, if the building is in a high-risk area for wildfires, tile roofs are highly recommended because they are fire-resistant.
- Are all water heaters properly strapped and fitted with a flexible gas supply line, so that they can't fall over and cause a fire or explosion triggered from a gas leak? State law requires existing water heaters to be braced, anchored, or strapped. (H&S §§ 19210-19217.)
- Where is the main gas shutoff, so that you may shut the gas off during an emergency? If the main gas line to the building is not shut off after a major earthquake, there is a high risk of fire or explosions due to leaking gas.
- Does the manager or owner have an earthquake preparedness plan to ensure that all tenants know how to safely exit the building and how to shut off any utilities if necessary?

CAUTION

Beware of brick! Unreinforced brick buildings have the worst record in terms of durability during an earthquake. Some buildings are not made of brick, but have a brick or stone veneer attached to the outside walls for aesthetic purposes. This veneer may be nice to look at, but unreinforced veneer is very susceptible to earthquake damage. Your building may not collapse in a major earthquake because it has a brick veneer, but anyone standing next to the building during an earthquake may be injured by bricks or stones falling off of the building.

RESOURCE

For more information on earthquake safety. Check the California Seismic Safety Commission website (www.seismic.ca.gov) for information, such as the *Homeowner's Guide to Earthquake Safety* (www.seismic.ca.gov/pub/CSSC_2005-01_HOG.pdf). Your city or town may also have neighborhood earthquake preparedness groups and lots of useful local information.

Check Out the Landlord and Building

Your prospective landlord will probably check you out pretty thoroughly (asking for references and getting a credit report). Turnaround is fair play. Start by asking other residents, especially the person whose unit you're considering renting, about the pluses and minuses of living in the building and how the landlord handles things like repairs. If possible, talk with people in the neighborhood about the reputation of the building or the landlord. Finally, you may find useful information through public records or by doing Internet searches.

What If the Place Does Not Meet the Above Standards?

If the place has serious problems, you should probably not rent it if you can possibly avoid it. A landlord who would even show you such a place probably won't or can't make the needed repairs. If the landlord promises to fix it up, be careful. First, ask other tenants how good the landlord is at keeping promises. Second, make him put his promises in writing and sign it, as illustrated in "Get All Promises in Writing," below. Be sure he also puts down dates on which certain repairs will be completed. Also, get him to write down that you will not have to pay your rent if he fails to meet the completion dates. If he doesn't want to agree to these things, he probably isn't taking his obligation to repair very seriously.

If you like the place but it has a few problems, simply ask the landlord to promise to make the necessary repairs. You might point out that he is required to make such repairs before renting, under the State Housing Law, but you will rent the place and let him repair it later, if he makes his promise (with dates) in writing and signs it.

How to Bargain for the Best Deal

Once you decide that you might like to rent a particular place, then negotiate the terms of the rental with the landlord or manager. Often you will be presented with a "take it or leave it" proposition, where the landlord is not open to making changes. Many times, however, landlords will be open to reasonable changes. Whether it be the rent that you are trying to change, improvements you would like, or particular terms in the contract, it never hurts to try.

How good a deal you can get from a landlord depends on how badly you are needed. If there are very few places available at the asking rent and a lot of people are looking, the landlord may tell you to take the deal (rent, security deposit, and form lease) or forget the whole thing. Even an attempt to bargain may make the landlord reluctant to rent to you.

If you are in an area where there are lots of places for rent and not too many people looking (say a university area in the spring), you will have more bargaining power. The landlord wants to rent the place soon (to get the rent) and may be afraid of losing you to another landlord.

If you can, try to talk to the last tenant who lived in the place. That person might give you some very valuable information on how to deal with the landlord, what is wrong with the place, and generally what it is like to live there. Other tenants or neighbors in the area might also be helpful on this.

In your first negotiation, it is good to remember that landlords who are impressed with you will be

more likely to want you as a tenant. Take a moment to consider what sort of folks you would like to rent to if you were a landlord. Certainly, a good first impression can be made on the application form. Most landlords ask you to fill out an application listing your jobs, bank, cars, income, and references. It is a good idea to make up your own form in advance, much as you would write a job résumé, and photocopy your application. If you don't get the first place, it will be available to submit when you apply for other units.

Get All Promises in Writing

Your future relationship with your landlord may be very pleasant. Hope for the best and try to be open, honest, and friendly. However, at the same time, take sensible steps for your own self protection, just in case things take a nasty turn.

It often happens that a tenant moves into an apartment that has not been properly cleaned, or that needs painting or repairs. The landlord may say that the tenant can deduct money from the rent in exchange for cleaning, painting, or repairs. Whatever promises the landlord makes, you should be aware that it is very common for this sort of vague, oral agreement to lead to misunderstanding, bitterness, and financial loss. The time to protect yourself is at the beginning. This may be your only chance to do so.

If a landlord promises to clean, paint, build a deck, install a fence, or reimburse you for material and work, or if there are any other kinds of promises you want to depend upon, get them in writing and include a date for completing the work. Asking for a promise in writing need not cause you tension or embarrassment. Just tell the landlord, politely, that you have made a simple list of what has been agreed to, and you want to go over it for clarification. If the landlord agrees that the list is accurate, include a line saying that this list is made a part of the written lease or rental agreement, and have the landlord date and sign it. There should be two copies, one for the landlord and one for your own file. (See "Sample Addendum to Lease or Rental Agreement," below.)

Sample Addendum to Lease or Rental Agreement

January 1, 20xx

Landlord Smith Realty and Tenant Patricia Parker make the following agreement, which is hereby added to the lease (or rental agreement) they entered into on _____, 20xx:

1. Patricia Parker agrees to buy paint and painting supplies not to exceed a cost of $120 and to paint apartment #4 at 1500 Acorn Street, Cloverdale, California, on or before February 1, 20xx and to forward all receipts for painting supplies and paint to Smith Realty.
2. Smith Realty agrees to reduce the payment due February 1, 20xx by $150 in consideration for the painting to be done by Patricia Parker and in addition to allow Patricia Parker to deduct the actual cost of paint and painting supplies (not to exceed $120) from the rent payment due February 1, 20xx.
3. The premises are being rented with the following defects:
   - dent in oven door
   - gouge over fireplace in wall

   These defects will be fixed by Smith Realty by _____, 20____.

_____
Smith Realty Company

_____
Patricia Parker By: B. C. Smith

The use of written contracts is standard among businesspeople and among friends when they are in a business relationship. The purpose of such writings is to remind people of what they once agreed to do. As explained earlier, a confirmation email or letter is an option if the landlord does not want to sign an addendum.

If the landlord won't paint, clean, or make repairs, be sure to list the faults as particularly and completely as you can, and get the landlord to sign and date the list. Otherwise, when you move out the landlord may claim that you caused the damage and refuse to refund all, or a part, of your deposit.

If the landlord doesn't want to sign your list, get a few of the most responsible of your friends to take a look at it and write a simple dated note of what they saw. And, if possible, have a friend take photographs of all defects. After the photographs are printed, the person taking them should identify each photo on the back by location, date, and signature. All notes and pictures should go into your file with your other records.

The Landlord-Tenant Checklist

Another good self-protection device for both landlord and tenant involves taking an inventory of the condition of the premises at the time you move in, when the landlord conducts the pre-move-out inspections, and then again when you move out. This means no more than making a brief written record of the condition of each room and having it signed by you and your landlord. Not only does the inventory give both of you an accurate record of the condition of the unit, but the act of making it provides a framework for communication and the resolution of potential disputes about security deposits when you move out. (See "Avoiding Deposit Problems" in Chapter 13.) We include a sample landlord-tenant checklist below.

FORM

You'll find a copy of the Landlord/Tenant Checklist in Appendix C, and the Nolo website includes a downloadable copy of this form (see Appendix B for the link to the forms in this book) which you can edit to fit your particular rental.

When filling out your checklist, mark "OK" in the space next to items that are in satisfactory condition (in the Condition on Arrival column). Make a note—as specific as possible—next to items that are not working or are in bad or filthy condition. Thus, you might state next to the "Stove and Refrigerator" listing: "generally good, but crack in freezer door." Be sure to note things like worn rugs, chipped enamel, holes in screens, and dirty cabinets, and inventory all furnishings.

Be sure you check the box at the bottom of the third page of the checklist, acknowledging that you tested the smoke detector and fire extinguisher in the landlord's presence and found them to be in working order.

Cosigning Leases

Some landlords require a cosigner on leases and rental agreements as a condition of renting. Normally, they ask the cosigner to sign the lease or rental agreement, or a separate contract pledging to pay for any rent or damage losses that the tenants fail to pay.

Many cosigner clauses are not enforceable in court, because they are so vague that they don't qualify as contracts. Also, if a landlord and tenant change the terms of their rental agreement—or even renew it—without the signed approval of the cosigner, the cosigner is no longer responsible. (CC § 2819; *Wexler v. McLucas,* 48 Cal.App.3d Supp. 9 (1975).) If a landlord sues a tenant for eviction, and for money damages (back rent), the cosigner can't be sued as part of the same suit. The cosigner must be sued separately either in a regular civil lawsuit or in small claims court.

TIP

Cosigners and disabled applicants. If you are a disabled applicant with insufficient income (but otherwise a suitable tenant), federal law requires landlords to accommodate you by allowing a cosigner, even if the landlord does not usually accept cosigners.

Landlord/Tenant Checklist

General Condition of Rental Unit and Premises

1234 Fell Street — Apt. 5 — San Francisco
Street Address — Unit — City

	Condition on Arrival	Condition on Initial Move-Out Inspection	Condition on Departure	Actual or Estimated Cost of Cleaning, Repair/Replacement
Living Room				
Floors & Floor Coverings	OK			
Drapes & Window Coverings	OK			
Walls & Ceilings	OK			
Light Fixtures	OK			
Windows, Screens, & Doors	back door scratched			
Front Door & Locks	OK			
Smoke Detector	OK			
Fireplace	N/A			
Other				
Kitchen				
Floors & Floor Coverings	cigarette burn hole (1)			
Walls & Ceilings	OK			
Light Fixtures	OK			
Cabinets	OK			
Counters	discolored			
Stove/Oven	OK			
Refrigerator	OK			
Dishwasher	OK			
Garbage Disposal	N/A			
Sink & Plumbing	OK			
Smoke Detector	OK			
Other				

	Condition on Arrival	Condition on Initial Move-Out Inspection	Condition on Departure	Actual or Estimated Cost of Cleaning, Repair/Replacement
Dining Room				
Floors & Floor Coverings	OK			
Walls & Ceilings	crack in ceiling			
Light Fixtures	OK			
Windows, Screens, & Doors				
Smoke Detector	OK			
Other				
Bathroom				
Floors & Floor Coverings	OK			
Walls & Ceilings	OK			
Windows, Screens, & Doors	OK			
Light Fixtures	OK			
Bathtub/Shower	tub chipped			
Sinks & Counters	OK			
Toilet	OK			
Other				
Other				
Bedroom				
Floors & Floor Coverings	OK			
Windows, Screens, & Doors	OK			
Walls & Ceilings	OK			
Light Fixtures	dented			
Smoke Detector	OK			
Other				
Other				
Other				

	Condition on Arrival	Condition on Initial Move-Out Inspection	Condition on Departure	Actual or Estimated Cost of Cleaning, Repair/Replacement
Other Areas				
Heating System	OK			
Air Conditioning	N/A			
Lawn/Garden	N/A			
Stairs & Hallway	N/A			
Patio, Terrace, Deck, etc.	N/A			
Basement	OK			
Parking Area	OK			
Other				
Other				
Other				
Other				
Other				

☑ Tenants acknowledge that all smoke detectors and fire extinguishers were tested in their presence and found to be in working order, and that the testing procedure was explained to them. Tenants agree to test all detectors at least once a month and to report any problems to Landlord/Manager in writing. Tenants agree to replace all smoke detector batteries as necessary.

Notes: _____

Furnished Property

	Condition on Arrival	Condition on Initial Move-Out Inspection	Condition on Departure	Actual or Estimated Cost of Cleaning, Repair/Replacement
Living Room				
Coffee Table	two scratches on top			
End Tables	N/A			
Lamps	OK			
Chairs	OK			
Sofa	OK			
Other				
Other				
Kitchen				
Broiler Pan	N/A			
Ice Trays	OK			
Other				
Other				
Dining Area				
Chairs	OK			
Stools	N/A			
Table	leg bent slightly			
Other				
Other				
Bathroom				
Mirrors	OK			
Shower Curtain	OK			
Hamper	N/A			
Other				

	Condition on Arrival	Condition on Initial Move-Out Inspection	Condition on Departure	Actual or Estimated Cost of Cleaning, Repair/Replacement
Bedroom				
Beds (single)	OK			
Beds (double)	N/A			
Chairs	OK			
Chests	N/A			
Dressing Tables	OK			
Lamps	OK			
Mirrors	OK			
Night Tables	N/A			
Other	N/A			
Other				
Other Area				
Bookcases				
Desks				
Pictures	hallway picture frame chipped			
Other				
Other				

Use this space to provide any additional explanation:

Landlord/Tenant Checklist completed on moving in on May 1, 20 xx.

Ira Eppler and Chloe Gustafron

Landlord/Manager

Tenant

Tenant

Tenant

Landlord/Tenant Checklist completed at Initial Move-Out Inspection on _____, 20 _____.

_____ and _____

Landlord/Manager

Tenant

Tenant

Tenant

Landlord/Tenant Checklist completed on moving out on _____, 20 _____.

_____ and _____

Landlord/Manager

Tenant

Tenant

Tenant

Know Your Manager

Many medium-to-large apartment complexes have managers. (State law requires a resident manager in any multiunit property of 16 units or more. (CCR Title 25, § 42.) Some owners use management corporations, who specialize in managing lots of rental units and who get paid a percentage (usually between 5% and 10%) of the rental income. Such companies tend to be sticklers for rules and procedures, but are usually less emotionally involved than owners, and are often more rational at arriving at businesslike compromises. Often, however, the owner will simply give a resident free or reduced rent to look after the property on a part-time basis. This can be either good or bad as far as you are concerned, depending on the personality of the manager and whether the manager has any real authority to take care of problems. Just as there are all sorts of landlords, there is an equal variety of managers.

In dealing with a manager on a day-to-day basis, not only is it important to notice who he is and how best to deal with him, it is also important to notice his relationship to the owner. If you can, find out how long the manager has been working for the owner. For instance, a manager who has been around for many years would know about the building and its tenants and would presumably be reliable and have a working relationship with the landlord. Remember, the owner and the manager may have very different interests. Some owners, for example, may want the property to yield a maximum amount of profit with a minimal amount of trouble, while others may be investing for long-term real property appreciation and be willing to be relatively generous to tenants in the meantime (these owners realize that low tenant turnover is the key to making money). Similarly, some managers might want to do as little work as possible for their free rent, while others, especially those who are in the business, may want to do a bang-up job in hopes that word will spread and they will get other jobs.

A landlord is legally responsible for the quality of the job done (or not done) by the manager or management company. Should you be in a situation in which the premises are not being kept clean or in good repair, or if the manager is obnoxious or invading your privacy, you will probably want to deal directly with the owner if possible. In any case, where communications are sticky or broken down, you should send duplicate copies of letters and other communications to the owner as well as to the manager.

CHAPTER 2

Sharing a Home

Lots of unmarried people rent a place together. Whether it involves sharing a bed or not, sharing a home can have all sorts of legal ramifications. Of course, there are the legalities when it comes to dealing with the landlord, but sometimes the legal rules governing the relationship between the roommates are of even more importance.

TIP

Be clear about the practical issues, too. Before you move in with roommates, even your closest friends, make sure you're compatible on key issues such a neatness and cleaning standards, financial responsibility, food sharing, privacy, noise, smoking, and overnight guests. The Sample Agreement Between Roommates, below, covers some key issues, such as moving out; you may want to add others.

The Legal Obligations of Roommates to the Landlord

If two people—let's call them James and Helen—together enter into a lease or rental agreement (written or oral), they are each on the hook to the landlord for all rent and all damages to the apartment—except "normal wear and tear." It makes no difference who—or whose friends—caused the damage, or who left without paying the rent. Let's look at several common situations.

> **EXAMPLE 1:** James and Helen both sign a written rental agreement providing for a total monthly rent of $1,500 for a flat. They agree between themselves to pay one-half each. After three months, James refuses to pay his half of the rent (or moves out with no notice to Helen and the landlord). In either situation, Helen is legally obligated to pay all the rent, as far as the landlord is concerned. James, of course, is equally liable, but if he is unreachable or out of work, the landlord will almost surely come after Helen for the whole amount. Since James and Helen have rented under a month-to-month written rental agreement, Helen can cut her losses by giving the landlord a 30-day written notice of intention to move. She can do this even if James is lying around the place, refusing to pay or get out.
>
> If Helen ends up paying the landlord all of the rent (more than her agreed share), she has a right to recover half of that from James. If payment is not made voluntarily, Helen can sue James in small claims court.

RESOURCE

See *Everybody's Guide to Small Claims Court in California*, by Ralph Warner (Nolo), for more information on how to use small claims court.

> **EXAMPLE 2:** The same fact situation as Example 1, except that this time there is a lease for one year. Again, both partners are independently liable for the whole rent. If one refuses to pay, the other is still liable, unless a third person can be found to take over the lease, in which case both partners are off the hook from the day that a new tenant takes over. As we discuss in Chapter 12, because of housing shortages in many parts of the state, it is often easy for a tenant to get out of a lease at little or no cost, simply by finding an acceptable new tenant and steering him or her to the landlord. A Craigslist ad will usually do it. The landlord has an obligation to limit his damages (called "mitigation of damages" in legal lingo) by renting to a suitable new tenant as soon as possible. Should the landlord fail to do this, he limits his legal right to collect all the damages from the original tenants.

Your Responsibility for Rent if You Move Out and Your Roommate Stays

If you are on a month-to-month tenancy, you should give written notice that you are terminating your tenancy at the premises, even if your roommate is

Sample Agreement Between Roommates

Agreement

Helen Mattson and James Kennedy, upon renting an apartment at 1500 Redwood Street, #4, Philo, California, agree as follows:

1. Helen and James are each obligated to pay one-half of the rent and one-half of the utilities, including the basic monthly cable bill. Rent shall be paid on the first of each month.
2. If either Helen or James wants to move out, the one moving will give the other person 30 days' notice and will pay his/her share of the rent for the entire 30-day period even if he/she moves out sooner. If both Helen and James wish to move, they will be jointly responsible for giving the landlord 30 days' notice.
3. No third persons will be invited to stay overnight in the apartment without the mutual agreement of both Helen and James.
4. If we have a dispute that we are not able to resolve, we agree to mediate that dispute with [*fill in, with a group such as a Community Board or a named mutual friend*].
5. If both Helen and James want to keep the apartment but one or the other or both no longer wish to live together, they will have a third party flip a coin to see who gets to stay. The loser will move out within 30 days and will pay all of his/her obligations for rent, utilities, and any damage to the apartment.

[*Here is an alternative for number* 5.]

5. If both Helen and James want to keep the apartment but no longer wish to live together, the apartment will be retained by the person who needs it most. Need will be determined by taking into consideration the relative financial condition of each party, proximity to work, the needs of minor children, if any, and [*list any other factors important to you*]. If Helen and James can't decide this issue by themselves or with the help of a mutually agreed-upon mediator, the determination will be made by a third party (the arbitrator). If it is not possible for Helen and James to agree on an arbitrator, the arbitrator will be chosen by [*fill in name*]. The arbitrator will be paid by the person who gets to keep the apartment. The determination will be made within ten days after either party informs the other that he or she wishes to separate, and after the arbitrator has listened to each person present his or her case. The arbitration award will be conclusive on the parties, and will be prepared in such a way that a formal judgment can be entered thereon in any court having jurisdiction over the dispute if either party so desires. After the determination is made, the person who is to leave will have an additional ten days to do so. The person who leaves is obligated for all rent, utilities, and any damage costs for 30 days from the day of the original determination to separate.

July 1, 20XX
Date

Helen Mattson
Helen Mattson

July 1, 20XX
Date

James Kennedy
James Kennedy

going to stay. This should end your obligations to the landlord and you shouldn't be liable for your roommate's rent. (*Schmidtt v. Felix* (1958) 157 Cal.App.2d 642, *Kavin v. Frye* (2012) 204 Cal.App.4th 35.)

But be aware that you may still be on the hook, if you signed a "guarantee" of the lease. Look carefully at the lease. Do you see language like, "Tenants shall be jointly and severally liable until the tenancy has terminated"? When just one tenant leaves, the tenancy has not terminated. Or, do you see "tenants shall be liable for all rent until all keys are turned in"? Again, your departure is not the same as "all keys ... turned in." With language like this, you will have to do a bit more to get out from under what is essentially a guarantee of the rent, even when you're no longer living there.

The obligation to "guarantee" your roommate's continued payment of rent must be explicit and unambiguous. (CC §§ 2787, 2799.) If you agreed to be "jointly and severally" liable for the rent (by signing a lease with promises like those above), you may have effectively guaranteed your roommate's rent. If you think that there is a chance that you have "guaranteed" the rent, you can write a simple letter to the landlord telling him that you are "revoking" (cancelling) any guarantee that you would be responsible for your roommate's rental obligations. (CC § 1815).

If you are on a fixed-term lease, you will be legally responsible to the landlord for rent up to the end of the lease. Unfortunately, there is not much you can do to avoid this except to help the cotenant find a suitable replacement and get consent from the landlord for that replacement. (When the premises are re-rented, your obligation ends.) At some point before the end of the lease, you should give a written notification that your obligations to the landlord will terminate on the termination date. Now, suppose your roommate remains after the termination of the lease, as a month-to-month tenant? To avoid continued responsibility for rent for any period after the expiration of the lease, follow the process outlined above: First, determine whether there is a guarantee; and second, if there is one, send a letter to the landlord revoking any such guarantee.

Having a Friend Move In

Perhaps just as common as two or more people renting a home together is for one person to move into a place already rented and occupied by another. This is often simple and smooth when the landlord is cooperative, but can involve some tricky legal questions if the landlord raises objections.

In some situations, where the landlord is not in the area or is not likely to make waves, it may be tempting to simply have the second person move in and worry about the consequences later. But you have to assume there will be a "later" and that the consequences could be eviction if you have a rental or lease agreement that prohibits assignment or subletting without the consent of the landlord (and most written agreements do). Even if there is no prohibition against subletting it is better to inform the landlord of the replacement.

Cities with rent control and/or just cause for eviction often have special rules regarding adding or replacing roommates. They are listed in Appendix A along with contact information, including web addresses.

CAUTION

Your tenancy may be at stake. Under state law, a written rental agreement may be terminated on 30 days' notice (60 days if the tenant has lived there for one year or more, and 90 days for government-subsidized tenancies) without the necessity of the landlord giving a reason. Thus, a landlord who wants to get rid of you can normally do so without too much trouble if you don't have a lease. So it pays to be reasonable when moving roommates in and out.

Sample Letter When a New Roommate Moves In

1500 Redwood Street #4
Philo, California 00000

June 27, 20xx

Smith Realty
10 Ocean Street
Elk, California 00000

I live at the above address, and regularly pay rent to your office.

As of July 1, 20xx, there will be a second person living in my apartment. As set forth in my lease, I enclose the increased rent due, which now comes to a total of $1,500. I will continue to make payments in this amount as long as two people occupy the apartment.

Should you wish to sign a new lease specifically to cover two people, please let me know. My friend, Helen Mattson, is regularly employed and has an excellent credit rating.

Very truly yours,

James Kennedy

James Kennedy

The Legal Relationship Between the Person Moving In and the Landlord

If Helen moves into James's apartment without being added to the rental agreement or lease, what is the relationship between Helen and James's landlord? Is Helen obligated to pay rent if James fails to pay? What if James moves out, but Helen wants to remain? If James ruins the paint or breaks the furniture, does Helen have any obligation to pay for the damage?

Here, Helen's agreement is with James only. Many landlords prefer to deal with only one tenant and, in this case, James is the one. If Helen doesn't pay the rent to James, it's James's problem as far as the landlord is concerned, he will still look to James for full payment. If Helen pays the rent to James and James doesn't pay the landlord, Helen (along with James) could be evicted for nonpayment of rent. If Helen moves out and doesn't get her deposit back from James, she has to sue James, not the landlord. If James moves out, Helen has no relationship with the landlord and can be legally evicted.

Helen can attempt to gain tenancy status as a cotenant of James. This would give her the full rights and obligations of a tenant. Here's how this can be done:

- Sign a new lease, rental agreement, or addendum to a rental agreement that names both James and Helen as tenants.
- Notify the landlord in writing of Helen's presence in the apartment. (This would be especially important to do in a rent control jurisdiction, as long as you don't have the risk of "illegally subletting" the unit). Again, this could take the form of a confirmation letter like the ones we have described previously. Helen could then argue later that the landlord effectively consented to her occupancy by continuing to accept rent with the knowledge that she was living there. This could be especially important in rent control cities. (*Parkmerced Co. v. San Francisco Rent Stabilization & Arbitration Board,* 215 Cal.App.3d 490 (1989).)
- In the same vein, Helen could pay rent directly to the landlord, and the landlord's continued acceptance of rent could create a tenancy. (*Parkmerced Co. v. San Francisco Rent Stabilization & Arbitration Board,* 215 Cal.App.3d 490 (1989).)

If the situation arises that James will be moving out before Helen, but Helen wants to stay, the legal relationship between Helen and the landlord should be clarified if it hasn't yet been. It's in everybody's interest that the discussion about moving forward take place as soon as possible. (See the Sample

Letter below.) Cities with rent control may have special rules regarding roommates, so check with your local rent board is this situation arises.

RENT CONTROL

If Helen has attained the status of a tenant, the landlord will probably not be able to raise the rent after James leaves, except as otherwise permitted by the local rent control ordinance. If, on the other hand, Helen has not become a tenant, she will be considered a "new tenant," and the rent can be raised as much as the landlord wants. Check your rent control ordinance, or ask the rent board, to learn whether you are protected.

Sample Letter When One Tenant Moves Out and the Other Remains (Lease)

1500 Redwood Street #4
Philo, California 00000

June 27, 20xx

Smith Realty
10 Ocean Street
Elk, California 00000

I live at the above address under a lease that expires on October 30, 20xx. A change in my job makes it necessary that I leave the last day of July. As you know, for the last six months my friend, Helen Mattson, has been sharing this apartment. Helen wishes to remain and enter into a new lease with you for the remainder of the original lease term. She is employed, has a stable income, and will, of course, continue to be a responsible tenant.

We will soon be contacting your office to work out the details of the transfer. If you have any concerns about this proposal, please give us a call.

Very truly yours,

James Kennedy

James Kennedy

Sample Letter When One Tenant Moves Out and the Other Remains (Rental Agreement)

1500 Redwood Street #4
Philo, California 00000

June 27, 20xx

Smith Realty
10 Ocean Street
Elk, California 00000

I live at the above address and regularly pay rent to your office. On July 31, 20xx, I will be moving out. As you know, my friend, Helen Mattson, also resides here. She wishes to remain and will continue to pay rent to your office on the first of each month.

Very truly yours,

James Kennedy

James Kennedy

The Legal Relationship Between the Person Moving In and the Person Already There

Alas, it often happens that a relationship that is all sunshine and roses at the start becomes unhappy over time. When feelings change, memories blur as to promises made in happier times, and the nicest people become paranoid and nasty. We suggest that before memories blur (preferably at the time that the living arrangement is set up), both people make a little note as to their mutual understandings, either as part of a comprehensive living together arrangement or in a separate agreement (see the "Sample Agreement Between Roommates," above).

If you get into a serious dispute with your friend involving your shared home and have no agreements to fall back on, you will have to do the

best you can to muddle through to a fair solution. Here are a few ideas to guide your thinking:

- If only one of you has signed the agreement with the landlord and that person pays all the rent, then that person probably should have the first claim on the apartment, especially if that person occupied the apartment first. The other should be given a reasonable period of time to find another place, especially if he or she has been contributing to the rent and/or has been living in the home for any considerable period of time.
- If you both signed a lease or rental agreement and/or both regularly pay rent to the landlord, your rights to the apartment are probably legally equal, even if one of you got there first. Try to talk out your situation, letting the person stay who genuinely needs the place the most. Some people find it helpful to set up an informal mediation proceeding with a third person helping the parties arrive at their own solution. If this doesn't work, you may wish to locate a neutral third-party arbitrator to hear the facts and make a decision. If you do this, make sure that the arbitrator is not a close friend, as the person who loses is likely to have hard feelings. Lean over backwards to be fair about adjusting money details concerning such things as last month's rent and security deposits. Allow the person moving out a reasonable period of time to find another place. *We have found that the best compromises are made when both people feel that they have gone more than halfway.*
- Each person has the right to his or her belongings. This is true even if they are behind in their share of the rent. Never lock up the other person's property.

It is generally illegal to deny a person access to his or her home, and doing so could result in a lawsuit where you would face liability for actual damages, statutory damages, and attorney fees. (CC § 789.3.) If, however, you or one of your cotenants has filed a certain type of injunction against another tenant, the landlord has 24 hours to change the locks upon your written request. If the landlord fails to do so, the tenant can change the locks. (See the discussion below for specifics.)

Victims of Harassment, Domestic Violence, Sexual Assault, Stalking, or Elder or Dependent Adult Abuse

Occasionally, cotenant relationships result in violence, abuse, or other forms of harassment. If the harassment rises to a severe level, the law allows you to go to court and ask for a "Restraining Order." The California Judicial Council provides some information about restraining orders. For further information go to www.courts.ca.gov/1044.htm and to www.courts.ca.gov/selfhelp-domesticviolence.htm (for information related to domestic violence restraining orders) and to www.courts.ca.gov/selfhelp-elder.htm (for information related to elder and dependent adult abuse). If you cannot download forms, then your local court should also have information about obtaining a restraining order. Note also that courts have their own rules about how these requests are reviewed by a judge, so be sure to follow their procedures.

If you get a restraining order *against a cotenant or subtenant* forbidding him (or her) from contacting you ("no contact" orders) and the restraining order is not more than 180 days old, you can demand in writing that the landlord change the locks within 24 hours. If the landlord does not, you have the right to change the locks yourself if you do it in a workmanlike manner. If you do end up changing the locks, you are required to notify the landlord within 24 hours and provide him with a key. (CC § 1941.6.)

Sometimes the target of a "non contact" order is someone other than a cotenant or subtenant. If you get a restraining order forbidding contact against someone who is not a tenant in your apartment

(such as a guest or a neighbor), you can have the locks changed as specified above if you act within 180 days of getting the order. Alternatively, if you file a police report against a non-tenant alleging domestic violence, sexual abuse, or stalking, you may likewise have the locks changed as outlined above. (CC § 1941.5.)

California gives tenants in these situations some protection from landlord retaliation. A landlord cannot terminate or fail to renew a tenancy based on a household member's status as a victim of domestic violence, sexual abuse, stalking, elder or dependent abuse, or human trafficking. (CCP § 1161.3.) A landlord may terminate a tenancy on that basis if one of the two situations below exist:

- the tenant allows the abuser to visit the property and the landlord has given a three-day notice of violation, which the tenant has failed to cure, or
- the landlord reasonably believes that the abuser poses a physical threat to the tenant or other tenants or a threat to their quiet enjoyment, the landlord has given a three-day notice of violation, and the tenant has failed to correct the violation. (CCP § 1161.3(b).)

RESOURCE

A number of California cities and counties have free or low-cost landlord-tenant mediation and arbitration services. In addition, the nonprofit Community Board program offers excellent mediation services in many San Francisco neighborhoods.

Guests

What about overnight guests—particularly those who stay over often? What relationship, if any, do these people have with the landlord? More important, is the landlord entitled to any legal recourse if you have a "regular" guest? The answer to this question often depends on what it says in a lease or written rental agreement or written house rules. (See Chapter 1.) Many restrict the right to have overnight guests to a certain number of days per year, and/or require notification if a guest will stay more than a few days. While these sorts of lease provisions aren't always strictly enforced, they are valid and can be grounds for a landlord evicting a tenant. Even in rent control areas that require just cause for eviction, a tenant who violates guest rules may be evicted. Under the terms of many ordinances, the tenant must first be given a written notice to correct the violation before the landlord goes to court.

Landlords do not want someone's status as a "guest" to suddenly change to that of a "subtenant." Easing this fear should be a first line of defense should a dispute arise. Indicators of whether a person is a guest or subtenant include whether the person:

- is paying any rent (normally, guests do not)
- has another residence where they keep most of their belongings
- has sole use of an area of the apartment (sole use of a bedroom, for example, suggests a permanent stay; sharing with another resident, without more, connotes guest status), and
- for those enjoying sole use and even those who are sharing a space with someone else, whether the landlord knew of the newcomer, approved of him or her being there, and accepted rent after that.

An additional landlord concern is the fear that additional occupants cause utility charges to increase and cause greater "wear and tear" on the building. Again, we suggest having a straightforward discussion about the guest or guests in question before the fact. Such discussions should be confirmed in writing in case the dispute turns into an eviction lawsuit. Keep in mind that the guest provision in your lease or rental agreement is probably valid, and if the landlord requires you to strictly adhere to it, you should comply in order to avoid eviction.

CHAPTER 3

All About Rent

Today most tenants pay 35% or more of their incomes on rent—sometimes many thousands of dollars a month. This money obviously means a lot to you, so you should understand your rights regarding when and how to pay, how much to pay, limits on late rent and returned check fees, and whether the landlord can increase the rent. Rent is also very important to the landlord, because it often goes immediately to the lender or mortgage holder. And nonpayment of rent is taken very seriously by the courts.

Many California tenants rent property covered by rent control rules. This chapter provides an overview of these rules, and Appendix A includes details for each community with rent control.

How Much Can the Landlord Charge?

There is no state or federal law that dictates what landlords can charge. A landlord can legally charge as much rent as he or she wants, unless the premises are subject to a local rent control rule (details on specific rent control ordinances in California are discussed below and in Appendix A). You may wish to check Craigslist or newspaper want ads for comparable rents in your area, or contact local real estate and property management companies.

When Is Rent Due?

Under state law, rent is due at the end of the term of the tenancy—for example, at the end of the month, in a month-to-month tenancy—unless the lease or rental agreement provides otherwise. (CC § 1947.) Almost every lease and rental agreement require payment at the beginning of the term. Thus, rent for use of the place in March would be due on March 1.

If the rent due date falls on a weekend or holiday, your rent is still due on that date, unless your lease or rental agreement specifies otherwise (many landlords will give you until the next business day). (*Gans v. Smull*, 111 Cal.App.4th 985 (2003).)

If you fail to pay your rent on the date it is due, the landlord may not throw you out or sue to evict you the next day. The landlord must first serve you with a written notice demanding that you pay the rent or get out in three days. If the third day falls on a Saturday, Sunday, or holiday, you get until the next business day to pay the rent. (CCP § 12a.) Only after that day can the landlord file a lawsuit to evict you. (See Chapter 14 for details on three-day notices.)

Form of Rent Payment

Your lease or rental agreement should specify what form of payment the landlord will accept, such as cash, personal check, or money order. For a new tenancy, cash should not be the only option. A landlord cannot demand that rent be paid only in cash, unless you have previously given the landlord a bounced check or have issued a stop payment on a rent check—and the landlord gave you written notice to that effect. In that event, the landlord's demand for cash only may last no longer than three months. (CC § 1947.3.) The landlord may also not demand that you pay rent via online payment or electronic funds transfer, unless the landlord gives you an alternative form of payment other than cash.

TIP

Document your rent payment. Sometimes misunderstandings arise over whether the rent has been paid and, if so, how much. Payment by check or electronic transfer of funds is the best way to document your history of rent payment, because you have quick access to your record of payments. Payments made by money order, however, can take weeks, sometimes months, to trace. Therefore, if you are paying your rent by money order or cash, it is especially important to get a receipt from your landlord. The law entitles you to a written receipt upon your payment of rent. (CC § 1479, CCP § 2075.)

Renters' Tax Credit

California gives qualified low-income renters a nonrefundable tax credit against their "net tax" that can be claimed on their state income tax return. (Ca. Rev. and Taxation Code § 17053.5.) Eligible renters are those who, filing singly or jointly, have an adjusted gross yearly income that's less than specified amounts. The California Franchise Tax Board (FTB) adjusts the minimum income amounts yearly. For returns filed for 2015, the amounts are:

- $37,768 or less if your filing status is single; or if you are married or a member of a registered domestic partnership but filing separately, and
- $75,536 or less if you are married or a member of a registered domestic partnership and filing jointly, the head of a household, or a qualified widow or widower.

To learn of the minimum income amounts for subsequent years, visit the FTB website at www.ftb.ca.gov and type "renter's tax credit" into the search box on the home page.

To claim the credits, taxpayers must satisfy the following requirements:

- For at least half the year, you paid rent for property in California that was also your principal residence, and that property was not exempt from property tax (such as church property).
- You did not live with another person for more than half the year (such as a parent) who claimed you as a dependent.
- You were not a minor living with and under the care of a parent, foster parent, or legal guardian.
- You or your spouse or registered domestic partner was not granted a homeowner's property tax exemption during the tax year (however, you may still claim the credit if your spouse or registered domestic partner did claim a homeowner's exemption, but you maintained a separate residence for the entire year.

Late Fees and Returned Check Charges

A fairly common landlord practice is to charge a fee to tenants who are late with their rent, or who bounce a check. Some cities with rent control ordinances regulate the amount of late fee charges. Check any rent control ordinance applicable to your rental. Most California cities and unincorporated areas, however, do not regulate what you can be charged for late fees.

Late Fees

Late charges must be reasonably related to the amount of money it costs the landlord to deal with your lateness. (CC § 1671(d).) Provisions in rental agreements and lease clauses that provide for unreasonably high late charges are not enforceable. (*Orozco v. Casimiro*, 212 Cal.App.4th Supp. 7 (2004).)

While there are no statutory guidelines as to how much a landlord can reasonably charge as a late fee, here are some guidelines that will help you decide if the amount is excessive:

- A reasonable late charge might be a flat charge of no more than $25 to $100, depending on the amount of rent. It is common for a landlord to give a tenant a grace period of from one to five days, but there is no law that requires this. A late charge that is out of proportion to the rent (say $100 for being one day late with rent on an $800 per month apartment) would probably not be upheld in court.
- If your landlord imposes a late charge that increases with each additional day of lateness, it should be moderate and have an upper limit. For example, $20 for the first day rent is late, plus $10 for each additional day, with a maximum late charge of 4% to 6% of the rental amount, might be acceptable to a judge, unless the property carries a high rent, in which case somewhat higher amounts might be allowed.

Some landlords try to disguise excessive late charges as a "discount" for early payment of rent.

One landlord we know concluded he couldn't get away with charging a $100 late charge on a late $850 rent payment, so instead he designed a rental agreement calling for a rent of $950 with a $100 discount if the rent was not more than three days late. Ingenious as this sounds, it is unlikely to stand up in court, unless the discount for timely payments is very modest. This is because the effect of giving a relatively large discount is the same as charging an excessive late fee, and a judge is likely to see it as such and throw it out.

Returned Check Charges

Landlords who accept checks as rent payment may legally charge an extra fee if a tenant's rent check bounces. As with late fees, bounced check charges must be reasonable—generally, no more than the amount the landlord's bank charges for a returned check (such as $15 to $25) per returned item, plus a few dollars for the landlord's trouble. State law sets a limit of $25 for the first bounced check and $35 for subsequent checks. (CC § 1719.)

Partial Rent Payments

On occasion, you may be short of money to pay your full rent on time. The best way to deal with this is to discuss the problem with your landlord and try to get the landlord to accept a partial payment. Except in the unusual situation where your lease or rental agreement gives you the right to make partial payments, the landlord is under no obligation to accept part of the rent on the due date along with your promise to catch up later.

Unfortunately, there is normally nothing to stop the landlord from accepting a partial rent payment on one day and serving you with a three-day notice to pay the rest of the rent or quit the next. However, if you can get your landlord to specifically agree in writing that you can have a longer time to pay, the landlord is bound by this agreement. Here is a sample.

Sample Agreement for Partial Rent Payments

John Lewis, Landlord, and Betty Wong, Tenant, agree as follows:

1. That Betty Wong has paid one-half of her $1,000 rent for Apartment #2 at 11 Billy St., Fair Oaks, CA, on March 1, 20xx, which is the date the rent for the month of March is due.
2. That John Lewis agrees to accept all the remainder of the rent on or before March 15, 20xx and to hold off on any legal proceeding premised on this instance of late rent to evict Betty Wong until after that date.

March 1, 20xx — Date
John Lewis — John Lewis, Landlord

March 1, 20xx — Date
Betty Wong — Betty Wong, Tenant

TIP

Use the memo line on your rent check to record the month for which you are paying your rent. (For instance, write "Rent for February 2015" if you are paying rent for that month.) This is especially important if you are making a partial payment. In that case you might want to write "First of two installments of rent for April 2015."

Rent Increases

Rent may not be increased during a fixed-term lease unless the lease allows it. If you rent month to month, the landlord can increase your rent with a properly delivered 30- or 60-day notice (see below). Different rent increase rules often apply if you live in public housing or "Section 8" housing. (See "Section 8 Housing," below.)

A rent increase is invalid if the landlord imposed it in order to retaliate against you because you

exercised some legal right, such as complaining about the condition of the building or organizing a tenants' union. (CC § 1942.5).

A rent increase is invalid if the landlord imposed it in order to discriminate against you on the basis of race, sex, children, or any other prohibited reason mentioned in Chapter 4.

Section 8 Housing

Tenants with low incomes may qualify for federally subsidized housing assistance, such as the Section 8 program of the federal Department of Housing and Urban Development (HUD). ("Section 8" refers to Section 8 of the U.S. Housing Act of 1937, 42 U.S. Code § 1437f.) That program determines a "market rent" for each rental property and then pays a percentage of the rent directly to the landlord, with the tenant paying the rest. The local housing authority, the landlord, and the tenant enter into a one-year agreement, using a written lease supplied by the local housing authority. Section 8 tenants cannot be evicted except for nonpayment of rent or other serious breaches of the lease. Under federal law, landlords are not required to participate in Section 8. If you think you may be eligible for Section 8 assistance, contact your local HUD office (find yours at www.hud.gov) or search for Section 8 on the HUD website.

Other than these restrictions, there is nothing in state law to prevent the landlord from doubling or even tripling the rent. Again, you are legally protected against such acts only if you are lucky enough to live in a city or county that has a local rent control ordinance.

Rent Increase Notices

Most of the time, a landlord may raise the rent on a month-to-month tenancy by "serving" a written notice on the tenant saying that the rent will be increased in 30 days (or more). (If the tenant has a *lease,* no rent increase is appropriate until the lease ends.) Local rent control laws, of course, limit the increase to the amount set by the rent control board.

30-Day or 60-Day Notice?

In certain situations, you're entitled to 60, not 30, days' notice of a rent increase. If the total of all the rent increases over the past 12 months (including the current raise) is equal to or less than 10% of the lowest rent charged to you during that time, 30 days' notice will suffice. But if the total increase is more than 10% of any monthly rent charged during the previous 12 months, you are entitled to a 60-day notice. Follow these steps to know which notice period applies to the rent increase you've received.

Step 1. Calculate when the new rent will take effect under a 30-day notice. For now, assume a 30-day period is all that's needed. Determine when the new rent will kick in by looking at your rent increase notice (see the discussion below for information on how your landlord must deliver the notice).

Step 2. Check your rent rate history. Count back 12 months from the effective date of the increase (you got that date in Step 1, above). Look at the rent you were charged for each of those 12 months, and choose the lowest rent.

Step 3. Calculate 10% of the lowest rent charged. Multiply the lowest rent charged (you identified that figure in Step 2) times 0.1 to get your "10% Figure" (this will be a dollar amount).

Step 4. Compare the new rent to the lowest rent plus the 10% figure. Now add the lowest rent charged during the last 12 months and the "10% figure" calculated in Step 3. If the new rent is more than the sum of the lowest rent and the "10% figure," then a 60-day notice is required.

It's important to understand what happens if your landlord gives you a 30-day notice when a 60-day notice is what's called for. We think that the notice is defective—it's as if the landlord never

gave you notice at all, so you do not have to pay the added rent. Nor do you have to pay the added rent in 60 days—it's not up to you to add the needed time to a defective notice. The landlord will have to start over and give you a new notice with the proper, 60-day period specified.

The examples below illustrate how to calculate the 10% figure. As you'll see, the tricky situations arise when landlords raise the rent frequently within any 12-month period.

RENT CONTROL

Rent control. Normally, increases in rent control situations will be well below the 10% threshold, because either the increase is tied to inflation (which has historically been 3% or less for many years), or because a local rent board regulates them yearly (and no board is likely to approve an increase that high!). However, if your landlord has banked prior increases or has permission to impose a capital expenditures increase, the total may well exceed 10% of the lowest rent charged in the previous 12 months. In those situations, the landlord would have to use a 60-day notice. Appendix A contains details on local rent control ordinances.

EXAMPLE 1: Len rents a house to Tom for $2,000 a month. Len wants to raise the rent $200, to $2,200, effective February 1. Tom looks back at how much rent he has been charged for the 12 months preceding Feb. 1. The rent was $2,000 for each of those months. Tom does the math and figures out that 10% of $2,000 is $200. Since the increase isn't *more* than 10% of the lowest rent charged in the 12 months preceding the February 1 target date, Len can properly use a 30-day notice. Assuming Len has served the notice correctly, Tom must pay the new rent on February 1.

EXAMPLE 2: Sally decided to raise Spencer's rent by $200 from $1,300 to $1,500. On May 1, she gave him a 30-day notice. Spencer knew that he would be entitled to 60 days' notice if the increase (combined with any others he'd had over the past 12 months) was over 10% of the lowest rent charged during those 12 months. Sally didn't know the law.

Spencer's rent had been a steady $1,300 from June 1 of the preceding year to now. He knew that any increase over $130 (that's 10% of $1,300) required a 60-day notice. He reasoned that Sally's notice was simply ineffective, and when June 1 arrived, he gave Sally a rent check for $1,300.

Sally looked at the amount and demanded the new rent, then listened incredulously as Spencer explained the law. She argued that he should just "tack on" 30 days to her notice, making the rent increase effective July 1. Spencer refused, and Sally wisely decided to start over by delivering a proper 60-day notice on June 1. Spencer won't have to pay the new rent until August 1—if Sally had done it right from the start, the increase would have kicked in on July 1.

Effect of Sale of Premises on Tenant's Rights

If your landlord sells the house or apartment building where you rent, your rights as a tenant remain the same. If you have a month-to-month agreement, the new landlord must give you 30 days' notice in order to raise your rent (60 days in some situations), change other terms of your tenancy, or have you move out (60 days if you've lived there for more than one year). There may be further restrictions in communities with rent control laws requiring the landlord to show "just cause" to evict. (See Chapter 3 for the law on rent increases and details on rent control, and Chapter 14 for information on evictions.)

If you have a lease, the new landlord cannot evict you (unless you break the terms of the lease) or change the terms of your agreement until the lease runs out. (Landlord bankruptcy is an exception to this.) For example, the new landlord cannot make you give away your dog if your lease does not prohibit pets.

If the property was sold at a foreclosure sale, California law (CCP § 1161b(b)) requires the new owner to honor the lease in most cases, and to give 90 days' notice to terminate a month-to-month tenancy. Again, this is subject to the just cause eviction rules in many cities with rent control—and in a few cities (Glendale and San Diego) without it.

How Rent Increase Notices Must Be Served

Questions often arise over the way landlords must tell you about a rent increase, which is understandable because the law has changed. In the past, landlords had to serve you personally or, if that wasn't possible, serve a responsible member of your household (followed by mailing a copy to you); this is called "substituted service." As a last resort, a landlord could post the increase on the door (and mail a copy also).

Now, however, landlords can serve a rent increase notice by ordinary first-class mail addressed to you at the premises—without having to try to serve you personally first. Of course, a landlord can still serve a rent increase by personal service or substituted service, explained above.

If you receive a notice by mail, the date that the notice takes effect is extended by five days. This means getting 35 days' notice for a 10%-or-less increase and 65 days' notice for an over-10% increase. (CC § 827(b)(1)(B)(2) & (3); CCP § 1013.)

Be very sure to understand that if your landlord wants to change other terms of the tenancy besides the rent, such as the amount of the security deposit or a pets rule, the landlord must use personal or substituted service. *Mail service is available only for rent changes.*

Responding to Improper Notice

If your landlord has delivered the bad news in the wrong way—using a 30-day notice when a 60-day was required, or failing to add time for mailed notices—you have a choice. You can stand on your rights and refuse to pay—hoping that this will buy you some time while the landlord goes back to square one and does it right. However, there is always the chance that the landlord will persist with the improper notice and proceed with a three-day notice to pay rent or quit, which is the first step in an eviction lawsuit.

If you get a three-day notice to pay rent or quit, you have to think long and hard whether it's worth it to go to court and prove your point in this arena. Even if you win, you'll spend time and money proving your point. Especially if the amount of the increase is in keeping with market rents and you have a good relationship with the landlord, you may want to simply pay the increase within the three days.

State laws allow landlords to change other terms of a tenancy besides increasing rent. For instance, they may change or establish "house rules" (regarding noise or other behavior issues); or they may introduce a "no pets" policy. A landlord cannot impose these terms to discriminate against you or to retaliate for your assertion of a legal right. However, if you are in a rent control jurisdiction and the changes lessen the value of your tenancy, you could petition for a "reduction in services" (discussed below). Finally, some of these changes can be just plain unfair. For instance, a notice prohibiting pets after you have already gotten a pet with the landlord's permission, could probably not be enforced in an eviction action under the doctrine of "waiver and estoppel," discussed in Chapter 14.

Rent Control and Eviction Protection

Rent control is a local phenomenon, established either through the initiative process or by the act of a city council or a county board of supervisors. State law regulates some specifics of the various rent control ordinances. The Costa-Hawkins Rental Housing Act restricts cities' power to impose rent control on single-family homes and condominium units, and also requires cities to allow landlords to raise rents after certain types of vacancies occur. (CC § 1954.50-1954.53.)

Some form of rent regulation now exists in 17 California communities, including Los Angeles, San Diego, San Jose, and San Francisco. Two cities—Glendale and San Diego—have just cause eviction protections, but do not regulate rents. Richmond and Ridgecrest are similar, but their eviction protections apply only to rental properties that have been foreclosed.

Cities With Rent Control and Eviction Protection Ordinances	
Berkeley	Palm Springs
Beverly Hills	Richmond**
Campbell* (mediation only)	Ridgecrest**
East Palo Alto	San Francisco
Fremont* (mediation only)	San Diego
Glendale	San Jose*
Hayward	Santa Monica
Los Angeles	Thousand Oaks
Los Gatos*	West Hollywood
Oakland	

* Rent control cities without just cause eviction protection

** Eviction protection in foreclosed properties only

Rent control ordinances generally control more than how much rent a landlord may charge. Many cities' ordinances also govern how and under what circumstances a landlord may terminate a tenancy, even one from month to month, by requiring the landlord to have "just cause" to evict. Many cities, most notably Los Angeles, require landlords to register their properties with a local rent control agency.

Several cities regulate security deposits (by requiring interest) and impose notice requirements for rent increases and termination of tenancies that are different from the state law requirements discussed in this book. (For details, see "Cities Requiring Interest or Separate Accounts for Security Deposits" in Chapter 13.)

Before we describe how rent control works, a few words of caution:

- Cities change their rent control laws frequently, and court decisions and voter referenda affect them. You should read the material here only to get a broad idea of rent control. It is absolutely necessary that you also contact your city or county to find out whether rent control presently exists and, if it does, to get a copy of current ordinances and any regulations interpreting it. The Rent Control Chart in Appendix A gives you all the necessary contact information.
- State law requires local rent control agencies in cities that require registration of rents to provide, upon request of the landlord or tenant, a certificate setting out the permissible rent for a particular unit. (CC § 1947.8.) The landlord or tenant may appeal the rent determination to the rent control agency within 15 days. If no appeal is filed, the rent determination is binding on the agency. If an appeal is filed, the agency must provide a written decision in 60 days.
- No two rent control ordinances are exactly alike. Some cities have elected or appointed boards that have the power to adjust rents; others allow a certain percentage increase each year as part of their ordinances. Some cities have enlightened ordinances with just cause for eviction provisions that require landlords to give and prove valid reasons for terminating month-to-month tenancies.

In order to summarize how each ordinance works, we have prepared a Rent Control Chart (in Appendix A) that outlines the major points of each ordinance. Here are brief explanations of key terms we use in the chart and the discussion below.

Legal Framework for Rent Control

Rent control ordinances are locally enacted laws that differ from city to city. Rent control ordinances are passed by a city council, board of supervisors, or by a ballot initiative. Although there are some state laws that control how far rent control can go, it is generally a local concern.

Most ordinances set up a governing body to execute the law—usually called a "rent board." The rent board then writes "rules and regulations" that are more detailed instructions about how the

law applies on a day-to-day basis. If you are in a rent control city, it is a good idea to familiarize yourself with both the ordinance and the rules and regulations. Appendix A has contact information and web addresses for cities with rent control and just cause for eviction laws.

Exceptions

No city's rent control ordinance covers all rental housing within the city. San Francisco, for example, exempts all rental units built after June 1979, whereas Los Angeles exempts those built after October 1978.

Registration

The cities of Berkeley, East Palo Alto, Los Angeles, Palm Springs, Santa Monica, Thousand Oaks, and West Hollywood all require the owners of rent controlled properties to register the properties with the agency that administers the rent control ordinance. This allows the rent board to keep track of the city's rental units, as well as to obtain operating funds from the registration fees.

These cities forbid landlords who fail to register their properties from raising rent. In fact, cities may require a landlord to refund past rent increases if the increases were made during a period in which the landlord failed to register property. However, the courts have ruled that it is unconstitutional for rent control ordinances requiring registration to allow tenants to withhold rents just because the property isn't registered. (*Floystrup v. Berkeley Rent Stabilization Board,* 219 Cal.App.3d 1309 (1990).)

Some cities, including Berkeley and Santa Monica, impose administrative penalties (fines) on landlords who fail to register property. However, both of these types of penalties do not apply in cases where the landlord's failure to register was not in bad faith and was quickly corrected (that is, the landlord registered the property) in response to a notice from the city. (CC § 1947.7.) To make things easier for landlords who make honest mistakes, state law requires cities to allow landlords any rent increases, which would have been allowed had the property been registered, to be phased in over future years if the following conditions are met:

- The landlord's original failure to register the property was unintentional and not in bad faith.
- The landlord has since registered the property as required by the city and paid all back registration fees.
- The landlord has paid back to the tenant any rents collected in excess of the lawful rate during the time the property wasn't properly registered.

Some rent control ordinances require, as part of the registration process, that the landlord provide the name and address of current tenants. Additional information concerning a tenant may be requested. Under state law, rent control agencies are directed to treat this information as confidential. (CC § 1947.7.)

Rent Formula and Individual Adjustments

Each city has a slightly different mechanism for allowing rent increases. All cities allow periodic (usually yearly) across-the-board increases. The amount of the increase may be set by the rent control board, or the ordinance may allow periodic increases of either a fixed percentage or a percentage tied to a local or national consumer price index. In most cities, landlords (and sometimes tenants) may petition the board for higher (or lower) rents based on certain criteria.

By state law, landlords can raise rents to any level after a tenant voluntarily vacates or is evicted for nonpayment of rent. (CC § 1954.53(d).) However, once the property is rerented, a city's rent control ordinance will once again apply and will limit rent increases for the new tenants in that residence. The only exception is where the ordinance provides that the property is no longer subject to rent control, as is the case in Hayward, Palm Springs, and Thousand Oaks.

Decreases in Services as Illegal Rent Increases

If for some reason you're not getting all the use out of your apartment that you had or were promised when you moved in, the rent board may determine that your rent should be lowered until your service—including repair and maintenance—is restored. You can also request "retroactive rent abatement," which asks for a reimbursement for rent overpayment during the time when the services were not provided. Examples of such "services" include lack of heat, removal of a storage area, ineffective pest control, or a leaking roof.

Capital Expenditures

In most rent control situations, landlords may ask their rent boards for permission to raise rents above the yearly allotment if they can prove that they have had to spend significant amounts on capital improvements to the property. "Capital improvements" means work that adds significant value to the property, appreciably prolongs its useful life, or adapts it to new uses. It is major work done to the structure of the building, such as replacing the roof, redoing the wiring, repairing a foundation, and seismic upgrading. Capital improvements do not include routine repair and maintenance.

Unfortunately, it's often difficult to know for sure whether a particular piece of work will qualify as a capital improvement. Rent control boards across the state do not consistently use the same criteria when evaluating a landlord's request. But some cases are pretty clear—we know of an Oakland landlord who gave his tenants bottles of champagne to thank them for their patience while construction was done on their building—and then argued to the rent board that his capital expenditures included not only the cost of the construction work, but also the cost of the champagne!

Cities That Require Just Cause for Eviction

Berkeley	Richmond*
Beverly Hills	Ridgecrest*
East Palo Alto	San Diego (tenancies of 2+ years)
Glendale	San Francisco
Hayward	Santa Monica
Los Angeles	Thousand Oaks
Oakland	West Hollywood
Palm Springs	

* Applies to foreclosed properties only.

Note: San Jose and Los Gatos do not have just cause eviction. Their ordinances, however, penalize a landlord who tries to evict a tenant in retaliation. The tenant has the burden of proving that the landlord's motive was retaliatory. (See Chapter 14 for details on retaliatory evictions.)

Eviction Protection (Just Cause for Eviction)

Rent Control limits how much a landlord can charge a tenant, but when a unit becomes vacant, in most instances there is no limit as to how much a landlord can charge. Because this would encourage landlords to create vacancies, most rent control laws have "just cause" for eviction protections. These provisions allow landlords to evict, but only for certain specified reasons, such as nonpayment of rent, violation of the lease, or owner move-in. In situations where the tenant is not at fault (for instance owner-move-in evictions), some cities require the landlord to make relocation payments to the tenant as part of the eviction. "Just cause" for eviction provisions vary from city to city, and some rent control jurisdictions, such as San Jose, have no such protections against eviction—in other words, a landlord can evict for "any reason or no reason at all." In all jurisdictions, however, a

landlord is not allowed to evict in order to retaliate against a tenant or to discriminate (see Chapters 4 and 14).

Unfortunately, some unscrupulous landlords have sought to evict tenants solely in order to create a new vacancy and set a higher rent. In other words, in order to charge more rent, which can be done only with a new tenancy, the landlord evicts the current tenant, often for little or no reason beyond the desire for more rent. To guard against such abuse, some rent control ordinances require the landlord to show "just cause" for eviction. A just cause eviction provision requires landlords to give (and prove in court, if necessary) a valid reason for terminating a month-to-month tenancy. The most common reason for just cause eviction is tenant failure to pay rent on time.

Just cause means that your landlord may not terminate your tenancy (or refuse to renew a lease) for any reason other than one that is allowed by the ordinance, such as nonpayment of rent, intentional damage to the rental, or the presence of unauthorized occupants. Other common just cause reasons include the desire of the landlord to move himself or close family members into the rental (called an "owner move-in" eviction), or the landlord's decision to get out of the rental business altogether or to convert the building to condominiums.

General Types of Rent Control Laws

As noted above, although no two cities' rent control laws are identical, they can be broadly categorized into three types. Obviously, this sort of gross classification isn't perfect, but it should help you place your city in the scheme of things.

Weak Rent Control

Let's start with the Bay Area cities of San Jose, Hayward, and Los Gatos, all of which have weak rent control ordinances. Although the rent control ordinances of these areas set forth a certain formula (usually fairly generous to landlords, in the 5%-8% range) by which rents can be increased each year, it is possible for a landlord to raise the rent above this figure and still stay within the law. This is because each of these cities' ordinances require a tenant whose rent is increased above the formula level to petition the board within a certain period (usually 30 days) and protest the increase. If you do not protest the increase within the time allowed, the increase is effective, even though it is higher than the formula increase allowed. If the increase is protested, a hearing is held, at which the board decides if the entire increase should be allowed.

In addition, except in Hayward, the rent control ordinances in these cities do not require the landlord to show just cause for eviction.

Finally, none of the ordinances in these cities require landlords to register their units with the board.

Moderate-to-Strict Rent Control

Unlike the practice in cities with mild rent control, landlords in cities with moderate-to-strict rent control bear the burden of petitioning the rent board for an above-formula rent increase and of justifying the need for such an increase based on certain cost factors listed in the ordinance, such as increased taxes or capital improvements. These cities also require the landlord to show a good reason ("just cause") to evict a tenant.

The rent control laws of Los Angeles, San Francisco, Beverly Hills, Palm Springs, and Thousand Oaks have traditionally been considered "moderate," while the rent control laws of Berkeley, East Palo Alto, Santa Monica, and West Hollywood have been considered "strict." Landlords in strict rent control cities must register their properties with the rent control board. Berkeley and Santa Monica also allow tenants to petition for lower rents based on a decrease in services.

Landlords may not, however, raise rents (even after a voluntary vacancy or eviction for cause) where they have been cited for serious health, safety, fire, or building code violations that they have failed to remedy for six months preceding the vacancy. (CC § 1954.53 (f).)

In cities with moderate and strict rent control, which require the landlord to petition the board before increasing the rent over a certain amount, a landlord can't circumvent the ordinance by having the tenant agree to an illegal rent. Even if a tenant agrees in writing to pay a higher rent and pays it, the tenant can sue to get the illegal rent back. (*Nettles v. Van de Lande,* 207 Cal.App.3d Supp. 6 (1988).) This cannot happen, however, in weak rent control cities that require the tenant to object to a rent increase if he or she wants to stop it from going into effect.

Rent Mediation Laws

In a few cities where city councils have felt tenant pressure, but not enough pressure to enact rent control ordinances, so-called voluntary rent "guidelines," or landlord-tenant "mediation" services, have been adopted. The chief beneficiaries of these dubious standards and procedures seem to be the landlords, since voluntary programs have no power to stop rent increases. On rare occasions, however, voluntary mediation or guidelines may work, particularly with smaller landlords who are trying to be fair. If your city or county isn't on the rent control list, check to see if it has a voluntary program.

Just Cause Protection in San Diego and Glendale

Two non–rent-control California cities—San Diego and Glendale—require a landlord in certain cases to have "just cause" to terminate a tenancy, even one from month-to-month. In the termination notice, the landlord must state which reason justifies the termination. (See the Rent Control Chart in Appendix A for details.)

Rent Control Board Hearings

Almost all cities with rent control provide for a hearing procedure to deal with certain types of complaints and requests for rent adjustments. In cities with weak rent control, a tenant's protest of a rent increase higher than that allowed by the applicable rent increase formula will result in a hearing at which the landlord must justify the increase. In other rent control cities, the landlord must request a hearing in order to increase rent above the formula amount. Finally, a few cities—such as Santa Monica, Los Angeles, San Francisco, West Hollywood, and Berkeley—allow tenants to initiate hearings to decrease rents on the basis of the landlord's alleged neglect or lack of maintenance on the property or removal of services.

In the first two types of hearings, whether initiated by a tenant who protests a rent increase over the formula amount in a weak rent control city, or by a landlord in a city that requires landlords to first obtain permission before exceeding the formula increase, the landlord must demonstrate at the hearing that a rent increase higher than that normally allowed is needed in order to obtain a fair return on the owner's investment. This most often means establishing that taxes, maintenance costs, utility charges, or other business expenses, as well as the amortized cost of any capital improvements, make it difficult to obtain a fair return on one's investment, given the existing level of rent.

Initiating the Hearing

A hearing is normally initiated by the filing of a petition or application with the rent board. In describing this process, let's assume that a landlord is filing a petition in a strict or moderate rent control city that requires landlords to obtain permission before raising rents above the formula increase allowed. You, the tenant, wish to protest the increase. Remember, this process is approximately reversed in weak rent control

cities, which require the tenant to protest such an increase.

In some cities, including Los Angeles and San Francisco, a landlord can file two types of petitions seeking an above-formula rent increase. If a landlord seeks an increase on account of recent capital improvements the landlord has made, the landlord will file a "petition for certification" of such improvements. If the owner seeks a rent increase on other grounds, the landlord files a "petition for arbitration."

Preparing for the Hearing

As a general rule, you will greatly increase your chances of prevailing if you appear at the hearing fully prepared. The hearing officer will be much better disposed to listen to your concerns if you are thoroughly familiar with the issues and make your presentation in an organized way.

As part of planning your preparation, first obtain a copy of the ordinance and any applicable regulations for the area in which your property is located. Then determine which factors the hearing officer must weigh in considering whether to give the landlord an upward individual adjustment from the formula increase. Your job is to show that the increase being requested is either not justified at all, or too high. To do this you will need to carefully review the landlord's claimed expenses and compare them to what is allowed under the ordinance.

You should also be prepared to produce a witness who is familiar with any items that you think might be contested. If for some reason your witness cannot appear in person, you may present a sworn written statement or "declaration" from that person. The statement should be as specific as possible. At the end, the words "I declare under penalty of perjury under the laws of California that the foregoing is true and correct" should appear, followed by the date and the person's signature.

Before the date set for your hearing, go and watch someone else's. (Most cities' hearings are open to the public, and even if they are sometimes closed, you can almost always arrange to attend as an observer if you call ahead.) Seeing another hearing may even make the difference between winning and losing at yours. This is because both your confidence and your capabilities will grow as you understand what the hearing officers are interested in and how they conduct the hearing. By watching a hearing, you will learn that while they are relatively informal, all follow some procedural rules. It is a great help to know what these are so you can swim with the current, not against it.

You are permitted to have an attorney or any other person, such as an employee or volunteer from a local tenants' rights group, represent you at a rent adjustment hearing. (Many landlords are represented at such hearings by their apartment managers or management companies.) Hiring someone to speak for you is probably not necessary. If you do a careful job in preparing your case, you will probably do as well alone as with a lawyer or other representative. One good alternative is for a group of tenants in your building to chip in and consult with an attorney or someone else thoroughly familiar with rent board hearings to discuss strategy. After the lawyer provides you with advice and information, you can handle the hearing yourself.

Keep all documents in one place and be sure to take them all to the hearing. This should include the petition, statements, photographs, relevant correspondence, and any notes that you have kept. Some cases involve a lot of documents, while others involve only a few. It is helpful to have an outline that highlights your arguments as well a list of your documents. You can use these as checklists to make sure you don't forget to say something or to present certain documents. You might want to have a script for your presentation. Be sure to make at least two copies of each document that you want to introduce into evidence, and put the documents into some logical order so that you are not fumbling through them when you make your case.

The Actual Hearing

Once you've prepared for the hearing, it's time to make your case. Here's how to be most effective.

Before the Hearing Begins

Arrive at the hearing room at least a few minutes before it is set to begin. Check in with the clerk or other official. Ask to see the file that contains the papers relevant to the application (either yours or the landlord's, depending on the type of ordinance). Review this material to see if there are any comments by office workers, rent board investigators, your landlord, or other tenants. Read the comments very closely, and prepare to answer questions from the hearing officer on any of these points.

As you sit in the hearing room, you will probably see a long table, with the hearing officer seated at the head. In a few cities, the hearing is held before several members of the rent board, and they may sit more formally on a dais or raised platform. In any event, you, the landlord, your representatives (if any), and any witnesses will be asked to sit at a table or come to the front of the room. A clerk or other employee may make summary notes of testimony given at the hearing. Or, in some cities, hearings are tape recorded. If, under the procedure followed in your city, no record is kept, you have the right to have the proceedings transcribed or tape recorded, though at your own expense.

The Hearing Officer's Role

The hearing officer (who may be a city employee or volunteer mediator or arbitrator) or chairperson of the rent board will introduce herself or himself and the other people in the room. If you have witnesses, tell the hearing officer. The hearing officer, or sometimes an employee of the rent board, will usually summarize the issues involved in the hearing. At some point, you will be sworn to tell the truth; it is perjury to lie at the hearing. When these preliminaries are complete, you and your landlord will have an opportunity to present your cases.

Many hearing officers, rent board employees, and members of rent boards tend to be sympathetic to tenants. This is not the same thing as saying that they will bend over backwards to help you. Like most judges (who on balance are probably more sympathetic to landlords), most make an honest effort to follow the law. In other words, your job is to work to make your legal position as unassailable as possible.

A rent adjustment hearing is not like a court hearing. There are no formal rules of evidence. Hearing officers will usually allow you to bring in any information that may be important, though in a court of law it might not be admissible. Relax and just be yourself.

Making Your Case

Present your points clearly, but in a nonargumentative way. Sometimes an outline on a 3" x 5" card will help you to focus. Don't get carried away with unnecessary details. You probably won't be given much time, so be prepared and get to the point quickly. The hearing officer may ask you questions to help you explain your position. Make sure you present all documentary evidence and witnesses necessary to back up your case. Later, the hearing officer will give the landlord or her representative a chance to present her case and to ask you questions. Answer the questions quietly. It is always counterproductive to get into an argument. Even if you feel the landlord is lying or misleading, don't interrupt. You will be given time later to rebut the testimony. Direct all your argument to the hearing officer, not to the landlord or her representative.

When your witnesses are given the opportunity to testify, the normal procedure is simply to let them have their say. You may ask questions if the witness forgets something important, but remember, this is not a court and you don't want to come on like a lawyer. Very likely, the hearing officer will also ask your witnesses questions. The landlord has the right to ask the witnesses questions as well.

In rare instances, you may get a hearing officer or rent board chairperson who dominates the hearing or seems to be hostile to you, or perhaps to tenants in general. If so, you will want to stand up for your rights, without needlessly confronting the

hearing officer. Obviously, this can be tricky, but if you know your legal rights and put them forth in a polite but direct way, you should do fine. If you feel that the hearing officer is simply not listening to you, politely insist on your right to complete your statement and question your witnesses.

Just before the hearing ends, the hearing officer should ask if you have any final comments to make. Don't repeat what you have already said, but make sure all your points have been covered and heard.

TIP

Surprised? Ask for time to regroup!

Sometimes issues arise during the hearing that one side or another did not think would come up. When this happens, the judge or hearing officer will often allow you or the other side to "leave the record open" in order to provide additional information or documentation on that point. That would usually give you one or two weeks to provide the necessary additional documentation. Be sure to ask for this if a document or witness statement that you don't have at hand suddenly becomes pertinent.

At the end of the hearing, the hearing officer will usually tell you when you can expect the decision. A written decision will usually be mailed to you within a few days or weeks of the hearing. Some cities, however, do not issue written decisions; the hearing officer just announces the decision at the end of the hearing.

The Decision

Depending on the city and the hearing procedure, you may or may not end up with a written decision and an explanation of why it was so decided.

In most cities, if a landlord's application for an increase was heard by a hearing officer, you have the right to appeal to the full rent board if the increase is allowed and you still feel it is improper. Your landlord has this same right if you prevail. If you make an appeal, you must file within a certain time and state your reason for the appeal. You may or may not have the opportunity to appear in person before the rent board.

The rent board will probably take the findings of the hearing officer at face value and limit its role to deciding whether the hearing officer applied the law to these facts correctly. On the other hand, the rent boards of some cities (including Los Angeles) will allow the entire hearing to be held again. (This is sometimes called a "de novo" hearing.) In addition, the board will not usually consider any facts you raise in your statement that you could have brought up at the earlier hearing, but didn't. If you discover a new piece of information after the original hearing, however, the board might consider it.

If it's your landlord who is appealing and you are satisfied with the earlier decision, you will want to emphasize the thoroughness and integrity of the earlier procedure and be ready to present detailed information only if it seems to be needed.

The rent board will generally have more discretion to make a decision than does a single hearing officer. If your case is unique, the board may consider the implications of establishing a new legal rule or interpretation.

If you again lose your decision before the board, or if your city permits only one hearing in the first place, you may be able to take your case to court, if you are convinced that the rent board or hearing board failed to follow either the law or their own procedures. However, if the hearing officer or board has broad discretion to decide issues such as the one you presented, you are unlikely to get the decision overturned in court. Speak to an attorney about this as soon as possible, as there is a time limit (usually 30 days) for filing an appeal. To appeal a rent board decision, you must have a transcript of the hearing to give to the court.

What to Do If the Landlord Violates Rent Control Rules

Take the following steps if you suspect your landlord has in any way violated your city's rent control rules.

- Get a copy of your local ordinance—and any regulation interpreting it—and make sure you are right. You may want to call the local rent board to confirm that what the landlord is doing violates the law. Contact any local tenants' rights organization and get the benefit of its advice. To find yours, check the statewide tenants' rights organization, www.tenantstogether.org.
- If you think your landlord may have made a good faith mistake, try to work the problems out informally.
- If that doesn't work, file a formal complaint with your city rent board.
- If the landlord's conduct is extreme, talk to a lawyer. You may have a valid suit based on the intentional infliction of emotional distress, on invasion of privacy, or on some other grounds, including those provided in the ordinance itself.

CHAPTER 4

Discrimination

There was a time when landlords could refuse to rent to just about anyone they didn't like. All sorts of groups—including African-Americans, Asians, Chicanos, women, unmarried couples, gays, families with children, and many more—were routinely subjected to discrimination. Fortunately, our state and federal legislatures have taken steps to end these abuses.

Today it is illegal for a landlord to refuse to rent to you or engage in any other kind of discrimination on the basis of your membership in any one of several "protected" groups. In addition, a refusal to rent to you that is not closely related to the legitimate business needs of the landlord may also be illegal. To put this more specifically, a combination of statutes and cases forbid discrimination on the following grounds:

- race
- religion
- ethnic background and national origin
- sex, sexual orientation, and gender identity
- marital status
- physical and mental disability, or
- families with children (unless the rental units are specifically designated for older citizens, as is the case with retirement communities).

In addition, the California Supreme Court has held that state law forbids landlords from discriminating on the basis of one's personal characteristic or trait. (*Harris v. Capitol Growth Investors XIV,* 52 Cal.3d 1142 (1991).)

Forbidden Types of Discrimination

State law, and in some cases federal law, absolutely forbids discrimination on the following grounds, regardless of a landlord's claim of a legitimate business need:

Race, color: This is forbidden by California's Unruh Civil Rights Act (CC § 51-53), the Fair Employment and Housing Act (GC §§ 12955-12988), the U.S. Civil Rights Act of 1866 (42 U.S.C. § 1982—see *Jones v. Mayer Co.,* 329 U.S. 409 (1968)), and the Federal Fair Housing Act of 1968 (42 U.S.C. §§ 3601-3619).

Religion: This is forbidden by all the laws listed above, except the Civil Rights Act of 1866.

Ethnic background and national origin: Same as Religion, above.

Sex (including sexual harassment—see below): Same as Religion, above.

Marital status (including discrimination against couples because they are unmarried): This is forbidden under California law by both the Unruh and Fair Employment and Housing Acts. (*Smith v. Fair Employment & Housing Commission,* 12 Cal.4th 1143, 51 Cal.Rptr.2d 700 (1996); *Hess v. Fair Employment and Housing Comm.* 138 Cal. App.3d 232 (1982); and *Atkisson v. Kern County Housing Authority,* 59 Cal.App.3d 89 (1976).)

Age: This is expressly forbidden by state law. (CC § 51.2.) In federal law, discrimination on the basis of age—including children and discrimination against the elderly, sometimes called "reverse discrimination"—is considered a part of discrimination on the basis of familial status.

Families with children: Discrimination against families with children is forbidden by the federal Fair Housing Amendments Act of 1988 (42 U.S.C. § 3604.) and by the Unruh Civil Rights Act, except in housing reserved exclusively for senior citizens. (CC § 51.3 defines senior citizen housing as that reserved for persons 62 years of age or older, or a complex of 150 or more units (35 in non-metropolitan areas) for persons older than 55 years. Under federal law, housing for older persons is housing solely occupied by persons 62 or older, or housing intended for people over 55 that is, in fact, 80% occupied by people 55 or older (42 U.S.C. § 3607).) In addition, several cities, including San Francisco, Berkeley, Los Angeles, Santa Monica, and Santa Clara County (unincorporated areas only), have local ordinances forbidding this sort of discrimination.

Disability: Under the federal Fair Housing Act and the state's Unruh and Fair Employment and Housing Acts, it is illegal for a landlord to refuse to rent to a person with a physical or mental disability (including hearing, mobility, and visual impairments, chronic alcoholism, chronic mental illness, AIDS, and mental retardation), or to offer different terms to disabled applicants. The landlord must permit the tenant to make reasonable modifications to the premises if necessary for the tenant to fully use the premises. When reasonable, the landlord may, however, require the tenant to restore the interior of the premises at the end of the tenancy. In addition, a landlord must rent to an otherwise qualified disabled person with a properly trained service or comfort animal, even if the landlord otherwise bans pets. For more on the rights of disabled tenants, see "Disabled Renters' Housing Rights" on the Nolo website at www.nolo.com/legal-encyclopedia/disabled-renters-housing-rights-30121.html.

Sexual orientation: This includes homosexuality. Discrimination on this basis is forbidden by the Unruh Civil Rights Act. (*Hubert v. Williams,* 133 Cal.App.3d Supp. 1 (1982).) In addition, a number of California cities specifically ban discrimination for this reason.

Gender identity: Landlords may not discriminate against tenants who have changed, or are in the process of changing, their gender, through hormone treatment, surgery, or both. In practical terms, if a tenant's or applicant's dress and mannerisms don't match the landlord's expectations for someone with that person's stated gender identity, the landlord cannot refuse to rent (or otherwise discriminate) on that basis. (GC § 12920.)

Smoking: Discrimination against tenants on the basis that they are smokers is perfectly legal. Civil Code Section 1947.5 allows landlords to prohibit smoking in all or part of the premises, including all or part of any common areas in a multiunit building. Also, California courts have refused to give nonsmokers protection against discrimination (in a restaurant context). (*King v. Hofer,* 42 Cal.4th 678 (1996).)

Animals: Although it is generally legal to refuse to rent to people with pets, it is illegal to do so in the case of service or comfort animals for the physically or mentally handicapped. (CC § 54.1(b)(5).) If you rent a condominium, you may keep one pet under specified conditions per state law. (CC § 1360.5.)

Public assistance or source of income: Discrimination against people on public assistance is forbidden by the Unruh Civil Rights Act and the Fair Housing and Employment Act (GC § 12955.). (59 Ops. Cal. Atty. Gen. 223 (1976).) However, refusing to rent to persons under a certain income level, if applied across the board, is not illegal. (*Harris v. Capital Growth Investors XIV*, 52 Cal.3d 1142 (1991).)

Immigration status: Landlords may not ask prospects or existing tenants about their immigration status (their right to be legally in the United States). (CC § 1940.3.) They may, however, ask a tenant whom they intend to pay as a resident manager to fill out IRS Form I-9, which will result in the landlord being shown identifying documents or visas that establish the tenant/manager's right to work in this country.

Perceived characteristics. The law protects you when the landlord *thinks* you're a member of a protected group, but you are not. Let's say you are a straight white man, but the landlord thinks you are homosexual and discriminates against you on that basis. The fact that you are not a member of a protected group would not prevent you from suing the landlord for unlawful discrimination. (CC § 51(e)(6).)

"Persons associated with." The law also protects tenants who are not members of a protected class, but who associate with members of a protected group. Let's say a white tenant has African American friends who visit his apartment. It is illegal for the landlord to discriminate against the tenant because of the race, color, and so on of the people with whom the tenant associates. (CC § 51(e)(6), *Winchell v. English,* 62 Cal.App.3d 25 (1976).)

Other unlawful discrimination: After reading the above list outlining the types of discrimination forbidden by California and federal law, you may

assume that it is legal for a landlord to discriminate for other reasons—for instance, discrimination against men with beards or long hair. California's Unruh Civil Rights Act has been construed by various California appellate courts to forbid all forms of "arbitrary" discrimination that bear no relationship to a landlord's legitimate business concerns. So, even though the Unruh Act contains only the words "sex, race, color, religion, ancestry, or national origin" to describe types of discrimination that are illegal, the courts have ruled that these categories are just examples of types of arbitrary and illegal discrimination. On this basis, the California Supreme Court has ruled that landlords can't discriminate against families with children, and has stated that discrimination on the basis of one's personal characteristic or trait is also illegal. (*Harris v. Capitol Growth Investors XIV,* 52 Cal.3d 1142 (1991).)

Information on Fair Housing Laws

For information on the rules and regulations of the Fair Housing Act, contact a local office of the U.S. Department of Housing and Urban Development (HUD). Find yours at www.hud.gov. For information on state fair housing laws, contact the Department of Fair Employment and Housing (DFEH) at 800-884-1684 or check the DFEH website at www.dfeh.ca.gov. You'll also find good online information at www.housing.org, a website maintained by the nonprofit Project Sentinel. For information on local housing discrimination laws, contact your local city manager's or mayor's office.

What Constitutes Discrimination?

Although the most common forms of illegal discrimination in rental housing consist of refusing to rent to prospective tenants for an arbitrary reason or offering to rent to one person on tougher terms than are offered to others with no good reason for making the distinction, these aren't the only ways a landlord can be legally liable for unlawful discrimination. A landlord's termination of, or attempt to terminate, a tenancy for a discriminatory reason, harassment, or discrimination in providing services such as the use of pool or meeting room facilities or other common areas, is illegal and can provide the discriminated-against tenant with a defense to an eviction lawsuit as well as a basis for suing the landlord for damages. (See "What to Do About Discrimination," below.)

In addition, a landlord's failure to "reasonably accommodate" a person's disability may also constitute an act of discrimination. This issue often arises when a person requires a service or support animal, or access for a home care worker (see discussion below).

EXAMPLE 1: Bill Lee rents apartments in his six-unit apartment building without regard to racial or other unlawful criteria. His tenants include an African-American family and a single Latin-American woman with children. When Constance Block buys the building from Bill, she immediately gives only these two tenants 30-day notices. Unless Constance can come up with a valid nondiscriminatory reason for evicting these tenants, they can fight the eviction on the basis of unlawful discrimination. They can also sue Constance for damages in state or federal court.

EXAMPLE 2: Now, let's assume that Constance, having lost both the eviction lawsuits and the tenants' suits for damages against her, still tries to discriminate by adopting a less blatant strategy. One way she does this is by adopting an inconsistent policy of responding to late rent payments. When her Caucasian tenants without children are late with the rent, she doesn't give them a three-day notice to pay rent or quit until after a five-day "grace period," while nonwhite tenants receive their three-day notices the day after the rent is due. In addition, when nonwhite tenants request repairs or raise other issues about the condition of the premises, the speed of Constance's response mimics a turtle's walk after waking from a snooze in the sun. These more subtle (or not so subtle, depending on the situation) means of discrimination are also illegal, and Constance's tenants have grounds to sue her, as well as to defend any eviction lawsuit she brings against them.

Legal Reasons to Discriminate

The fact that all forms of arbitrary discrimination in rental housing are illegal does not mean that every time you are turned down for an apartment, you are being discriminated against for an illegal reason. The landlord may have discriminated against you for a legal reason. What are legal reasons that justify a landlord in discriminating against a prospective tenant? There is no list set out in a statute, but if a landlord discriminates against prospective tenants because they have objective characteristics that would tend to make them poor tenants, the landlord is on solid legal ground. These characteristics include a bad credit history, credit references that don't check out, a past history of not paying rent or of using residential premises to run an illegal business (for example, drugs or prostitution), status as a sex offender or felon, and anything else that honestly and directly relates to the quality of being a good tenant. A landlord can refuse to rent to a tenant, for example, on the basis of income, by requiring the tenant's income to be at least three times the amount of rent. (*Harris v. Capitol Growth Investors XIV,* 52 Cal.3d 1142 (1991).)

If a landlord relies on a credit report to take any action that negatively affects a tenant's (or prospective tenant's) interest, the tenant has a right to a copy of the report. (CC § 1787.2.)

Note that the law allows for a couple of specific exceptions to the rules described above. Educational institutions are allowed to set aside housing for married couples (GC § 12955(a)(2)), and some communities can be "seniors only" (55 and older). (CC § 51.2-51.4.)

Rentals to Single Boarders in Single-Family Homes

You may have seen an advertisement like this, in a newsletter or supermarket notice board: "Widow seeks single, older Christian lady to share her home as a boarder ...." Based on what you know about illegal housing discrimination, you might be wondering how this type of advertisement escapes prosecution. Isn't the ad above a perfect example of marital, age, religious, and sexual discrimination?

The answer is, yes. But the reality of the situation is that few spurned boarders, and certainly fewer government agencies, are interested in suing one-person landlords and forcing them to accept a housemate not of their choosing. And state housing law does, in any event, make housing preferences like the example above perfectly legal as long as there is:

- only one boarder, and
- the landlord has used no discriminatory advertising. (GC §§ 12955(c) & (d) and § 12927(c).)

The ban against discriminatory advertising means that the owner must not make any discriminatory notices, statements, or advertisements. However, how a one-person landlord would be able to communicate her preferences for her boarder without making any "notices, statements, or advertisements" is beyond our understanding.

In order to clarify the law, the legislature amended the state Fair Employment and Housing Law to provide that advertisements for a boarder of a certain sex to share the same dwelling unit will not be considered a discriminatory act. (GC § 12927(2)(B).) In other words, the widow would be on solid ground if she mentions in a print or online ad only her desire for a female roommate, but her stated preferences for an older, single Christian would still, theoretically, constitute housing discrimination.

Occasional Rentals

Consider the owner who rents out his home while on a temporary job assignment in another state, or the family that occasionally takes an extended summer vacation and rents out their home. What about the teacher who rents out her home during every summer—an occasional *but regular* rental situation? And how about the landlord who owns a vacation rental—one that the family uses regularly, but that is also regularly rented to weekenders and others on vacation? Are tenants who rent from these landlords entitled to the protection of the fair housing laws?

Do Antidiscrimination Laws Cover Owner-Occupied Rentals?

An owner-occupant of a duplex, triplex, or larger complex, is governed by civil rights laws in the renting of the other unit(s) in the building, even though he or she lives in one of the other units, because the owner-occupant is renting out property for use as a separate household, where kitchen or bathroom facilities aren't shared with the tenant. (See *Swann v. Burkett*, 209 Cal. App.2d 685 (1962) and 58 Ops. Cal. Atty. Gen. 608 (1975).) The State Fair Employment and Housing Act also applies, but the federal Fair Housing Acts do not.

Unfortunately, the answers to these questions are not very clear. On the one hand, the Unruh Act applies only to "business establishments," which would seem to exclude the sporadic or one-time rental, but possibly not the infrequent-but-regular rental. However, the California Supreme Court has been mandated to apply Unruh "in the broadest sense reasonably possible," which might mean that tenants who rent in these situations would be covered by the fair housing laws. (*Burks v. Poppy Construction Company,* 57 Cal.2d 463, 20 Cal. Rptr. 609 (1962).) Moreover, the Fair Employment and Housing Act applies generally to "owners," and is not restricted to business establishments.

Small-scale landlords are subject to the fair housing laws. Regularly renting out a single apartment or house, or even half of an owner-occupied duplex, does constitute the operation of a business to which the Unruh Act applies.

Families With Children and Overcrowding

The fact that discrimination against families with children is illegal does not mean a landlord must rent you a one-bedroom apartment if you have a family of five. In other words, it is legal to establish reasonable space-to-people ratios. But it is not legal to use "overcrowding" as a euphemism justifying discrimination because a family has children, if a landlord would rent to the same number of adults.

A few landlords, realizing they are no longer able to enforce a blanket policy of excluding children, try to adopt criteria that for all practical purposes forbid children, under the guise of preventing overcrowding. A common but illegal policy is to allow only one person per bedroom, with a married or living-together couple counting as one person. This standard would result in renting a two-bedroom unit to a husband and wife and their one child, but would allow a landlord to exclude a family with two children. One court has ruled against a landlord who did not permit more than four persons to occupy three-bedroom apartments. (*Zakaria v. Lincoln Property Co.,* 229 Cal.Rptr. 669 (1986).) Another court held that a rule precluding a two-child family from occupying a two-bedroom apartment violated a local ordinance similar to state law. (*Smith v. Ring Brothers Management Corp.,* 183 Cal.App.3d 649, 228 Cal.Rptr. 525 (1986).)

The Fair Employment and Housing Commission is the enforcement arm of the California Department of Fair Employment and Housing (DFEH). The DFEH (one of the places a tenant can complain about discrimination) will investigate a complaint for possible filing with the Commission based on a "two-plus-one" rule: If a landlord's policy is more restrictive than two persons per bedroom plus one additional occupant, it is suspect. Thus, a family may have a case if the landlord insists on two or fewer people in a one-bedroom unit, four or fewer in a two-bedroom unit, six or fewer in a three-bedroom unit, and so on. However, a landlord who draws the line at three people to a one-bedroom, five to a two-bedroom, and seven to a three-bedroom unit is probably within her rights.

The "two per bedroom plus one more" rule of thumb is not, however, absolute. A landlord may be able to justify a lower occupancy policy for a particular rental if he can point to "legitimate business reasons." This is hard to do—while the inability of the infrastructure to support more tenants (perhaps the septic system or plumbing has

a limited capacity) may justify a lower occupancy policy, a landlord's desire to ensure a quiet, uncrowded environment for upscale older tenants will not. If your landlord's occupancy policy limits the number of tenants for any reason other than health, safety, and legitimate business needs, it may be illegal discrimination against families.

Look at the history of a landlord's rental policies. If the landlord used to disallow children before someone complained or sued about this, and only then adopted strict occupancy limits, it is likely that the landlord still intends to keep out children, and a court might well find the new policy illegal.

Often a child will be born after you have already resided in a place for some time. Is your landlord entitled to evict you if the birth of the new child would result in a seriously overcrowded situation? Legally, perhaps, especially if your lease or rental agreement makes it clear that the property can be occupied only by a set number of people, and the baby is one too many. However, if you face this situation and feel the landlord is in fact using the crowding issue as an excuse to get you out, carefully research the landlord's rental policies on other apartments. For example, if you find situations in which the landlord is allowing four adults to occupy a unit the same size as yours, and the landlord moves to evict you because the birth of your second child means your unit is now occupied by four people, you clearly have a good case.

Your landlord has the right, however, to insist on a reasonable increase in rent after a child is born if your lease or rental agreement specifically limits occupancy to a defined number of people—unless you're in a rent control city such as San Francisco, which prohibits landlords from charging extra rent for a newborn child.

How to Tell If a Landlord Is Discriminating

Occasionally apartment house managers—and even landlords themselves—will tell you that they will not rent to African-Americans, Spanish-surnamed people, Asians, and so on. This does not happen that often, because these people are learning that they can be penalized for discriminating.

Today, most landlords who wish to discriminate try to be subtle about it. When you phone to see if a place is still available, the landlord might say it has been filled if he hears a Southern or Spanish accent. If he says it is vacant, then when you come to look at it he sees that you are African-American, he might say it has just been rented. Or, he might say he requires a large security deposit which he "forgot to put in the ad." Or he might say that the ad misprinted the rent, which is really much higher. Many variations on these themes can be played.

If you suspect that the landlord is discriminating against you, it is important that you do some things to check it out. For example, if you think the landlord is asking for a high rent or security deposit just to get rid of you, ask other tenants what they pay. The best way to check is to run a "test." Many areas have governmental agencies (such as a Human Rights Commission) or nonprofit organizations (such as Project Sentinel in Northern California) who are trained to "test" to see if a residential landlord is discriminating.

If such resources are unavailable in your area, have someone who would not normally face discrimination (for example, a white male without kids) revisit the place soon after you do and ask if it is available and, if so, on what terms. If the response is better, the landlord was probably discriminating against you. Be sure that your friend's references, type of job, and lifestyle are similar to yours, so the landlord cannot later say he took your friend and turned you down because of these differences.

Disability and Requesting Reasonable Accommodations

In addition to protections against harassment, eviction, and refusal to rent, failure to "reasonably

accommodate" a person with a disability who has requested a change in policies or practices; or who has requested physical changes to the tenant's unit or common areas, is a form of discrimination. (GC § 12927(c)(1), CC § 54.1(b)(3)(B)).)

Although there is a wide range of potential accommodations, the most common examples are requests for service or support animals (when there is a "no pets" policy), allowing a caregiver (when there is a "no guests" policy), and making physical modifications to a rental unit. For example, a landlord must modify its "no pets" policy to allow a support animal to live with a person suffering chronic depression and bipolar disorder. (*Auburn Woods I Homeowners Assn. v. Fair Employment and Housing Commission,* 121 Cal. App.4th 1578 (2004).) Likewise, allowing a caregiver to assist someone who is either temporarily disabled (for instance, recovering from hip surgery) or permanently not able to care for himself may justify modification of the "no guests" policy. Under Government Code Section 12927(c)(1), a tenant may, at his own expense, make "reasonable" modifications to the unit in order to have an equal opportunity to fully enjoy the unit. However, a landlord may condition approval of these modifications on the tenant agreeing to restore the unit to its original condition before the modification (absent normal wear and tear).

In terms of "reasonable accommodations", "reasonable" is the operative term. Expense and change to physical characteristics to the outside and common areas of the building are two key factors. Sometimes accommodations that require a change in policy are "reasonable," while other times they may not be. Be sure to consider these factors when making a request of the landlord and frame the request as "reasonably" as the circumstances permit.

If you feel you are entitled to an accommodation, your first step is to make a written request to your landlord, asking that he provide an accommodation based on your disability. The letter should identify the disability in general terms and describe how the "accommodation" (such as a service dog, caregiver, and so on) would address that disability. For instance, a service dog would provide comfort, companionship, a regular daily routine, and help get you out of the house. It is usually very helpful to have a doctor provide a letter along the lines described above.

The landlord is required to respond promptly and, if necessary, engage in an "interactive process" to address your request. If the landlord grants your request, that the two of you should write and sign a statement memorializes your understanding. If the landlord does not agree, it's time to explore the options discussed below. Be aware that if, after the denial of your request, you decide (for example) to get a dog anyway, you could face an eviction. You may feel that you are on solid ground, but be sure to discuss this option with an attorney experienced in this area of law before you take this step.

What to Do About Discrimination

There are several legal approaches to the problems raised by discrimination. Regardless of what you do, if you really want to live in the place, you must act fast or the landlord will rent it to someone else before you can stop it.

Complain to the California Department of Fair Employment and Housing

The State of California Department of Fair Employment and Housing (DFEH) takes complaints on discrimination in rental housing. It has the power to order hefty damages for a tenant who has been discriminated against.

If you believe that you have been discriminated against, you can contact the office nearest you or call DFEH at 800-884-1684. You can also visit the DFEH online at www.dfeh.ca.gov, where you will also find phone numbers and addresses of regional

offices. You will be asked to fill out a complaint form, and an investigator will be assigned to your case. You must file your complaint within 60 days of the date of the violation or the date when you first learned of the violation. The investigator will try to work the problem out through compromise and conciliation. If this fails, the Department may conduct hearings and maybe take the matter to court. You can also consult a private attorney and consider suing the discriminating landlord.

TIP

Check out Project Sentinel. This Northern California nonprofit association provides an excellent source of online information at www.housing.org. Project Sentinel also offers a free mediation service for landlords and tenants and has the authority to investigate reports of housing discrimination.

Complain to the U.S. Department of Housing and Urban Development

You can also lodge a complaint with the U.S. Department of Housing and Urban Development (HUD) if the discrimination is based on race, religion, national origin, sex, family status, or disability. Search for "Housing Discrimination" under the "Topic Areas" on www.hud.gov, or call 800-347-3739. HUD has most of the same powers as does the state DFEH but must give the state agency the opportunity (30 days) to act on the case first. The HUD equal opportunity office for California is located at 450 Golden Gate Ave., San Francisco, CA 94102, 415-489-6400.

Sue the Discriminating Landlord

You may also want to consider seeing a lawyer and suing the landlord. If you have been discriminated against because of sex, race, religion, physical disability, national origin, age, or familial status, you can sue in state or federal court. Discrimination claims on the basis of marital status and all "personal trait" discrimination claims can be brought only in state court. If you can prove your case, you will almost certainly be eligible to recover money damages.

Legal Penalties for Discrimination

State and federal courts and housing agencies that find that discrimination has taken place have the power (depending on the agency) to order the landlord to rent a particular unit to you, or to pay you for "actual" or "compensatory" damages, including any higher rent you had to pay as a result of being turned down, and damages for humiliation and emotional distress. Under California's Unruh Civil Rights Act, for example, you may be awarded triple actual damages in a lawsuit for a violation of discrimination laws, and at least $4,000 must be awarded when tenants go to court and win. If you win, you will also be awarded attorney fees.

For more information on complaint procedures and penalties, contact the DFEH or HUD (contact information above).

Many, if not most, attorneys have had little experience with discrimination lawsuits. This is particularly true of lawsuits brought in federal court. Rather than try to find an attorney at random, you would be wise to check with an organization in your area dedicated to civil rights and fighting discrimination. They will undoubtedly be able to direct you to an experienced attorney.

Sexual Harassment by Landlords or Managers

Sexual harassment is a form of discrimination based on sex. (GC § 12927(c)(1).) Sexual harassment includes "sexual advances, solicitations, sexual requests, demands for sexual compliance, ... or other visual, or physical conduct of a sexual nature or of a hostile nature based on gender that were unwelcome and pervasive or severe." (CC § 51.9.)

Sexual harassment by a landlord or manager is illegal under state and federal laws prohibiting discrimination on the basis of sex: California's Unruh Civil Rights Act, the Fair Employment and Housing Act, and the Federal Fair Housing Act of 1968. Harassment that involves a violation of a tenant's privacy rights is illegal under state law. (CC § 1954.)

It's against the law for a landlord or manager to retaliate against tenants for having exercised their rights to be free from sex discrimination, including sexual harassment. Retaliation includes increasing rent, giving a termination notice, or even threatening to do so. (See Chapter 14 for advice on defending yourself against retaliatory eviction.)

Here are some things you can do to stop sexual harassment and protect your rights as a tenant. These are also crucial steps to take if you later decide to take formal action against the harassment.

Document the Harassment

Write down what the landlord or manager said or did to you, and the place and dates of the incidents. Keep copies of any sexually explicit material or threatening letters or emails the landlord or manager sent you. Note names of any witnesses and talk with other tenants to find out whether they have been harassed.

Tell the Harasser to Stop

As much as possible, deal directly with the harassment when it occurs—whether it's to reject repeated requests for a date or express your distaste for sexually explicit comments or physical contact.

Report the Incidents

If the apartment manager persists in sexually harassing you, or if you're uncomfortable speaking face to face, write the manager a letter spelling out what behavior you object to and why, and send a copy to the owner or property management firm. If the owner is the harasser, write the owner a letter demanding that these actions stop. If you feel the situation is serious or bound to escalate, say that you will take action against the harassment if it doesn't stop at once. Include a copy of the state and federal laws prohibiting discrimination on the basis of sex. If other tenants have been harassed, ask them to send a joint letter. Keep copies of all correspondence.

Complain to a Fair Housing Agency

"What to Do About Discrimination," above, provides more information on how the Department of Fair Employment and Housing can help, although, as we note, there are limits to their assistance.

File a Civil Harassment Complaint

If the landlord or manager is harassing because of your sex, sexual orientation, or for some other discriminatory reason, you have the option of going to court to get a "Civil Harassment Restraining Order." This order could prevent (restrain) the landlord or manager from contacting you or coming within a certain number of feet of your home. These kinds of orders are often obtained without the assistance of an attorney. The California Judicial Council provides some information about restraining orders as well as easy to use forms. For further information go to www.courts.ca.gov/1044.htm.

Each court has its own rules about how these requests are reviewed by a judge, so be sure to familiarize yourself with the procedures.

File a Lawsuit

If the harassment continues or if you're threatened with retaliatory eviction, but the state or federal housing agency fails to produce satisfactory results, consider filing a civil lawsuit. For example, if you have been physically harmed or threatened, consider filing an assault or battery action or a criminal complaint against the harasser.

CHAPTER 5

Tenant's Right to Privacy

Section 1954 of the Civil Code establishes the circumstances under which a landlord can enter a tenant's home, and Section 1953(a)(1) provides that these circumstances cannot be expanded, or the tenant's privacy rights waived or modified, by any lease or rental agreement provision. The first thing to realize is that there are only five situations in which your landlord may legally enter rented premises while you are still in residence. They are:

1. to deal with an emergency
2. when you give permission for the landlord to enter
3. to make needed repairs (or assess the need for them)
4. to show the property to prospective new tenants or purchasers, and
5. when you give permission for an initial final inspection, after you've given notice that you're moving out (or your lease is about to end).

In most instances (emergencies and tenant permission excepted), a landlord can enter only during "normal business hours" and then only after "reasonable notice," presumed to be 24 hours. (For reason number 5 above, a landlord must give you 48 hours' notice.) In addition, the landlord must give you written notice in many situations, as explained in "Written and Oral Notice," below.

Permissible Reasons to Enter

Because your right to privacy is so important, let's examine Section 1954 of the Civil Code carefully to make sure you thoroughly understand the details of how your right to privacy works.

Entry in Case of an Emergency

Under Civil Code Section 1954, your landlord or manager can enter the property without giving advance notice in order to respond to a true emergency that threatens injury or property damage if not corrected immediately. For example, a fire or a gas or serious water leak is a true emergency that, if not corrected, will result in damage, injury, or even loss of life. On the other hand, a landlord's urge to repair an important but non–life- or property-threatening defect, like a stopped-up drain, isn't a true emergency that allows entry without proper notice.

To facilitate a landlord's right of entry, the landlord and manager are entitled to have a key to the premises, including keys to any locks you may add.

Entry With the Permission of the Tenant

A landlord can always enter rental property, even without 24 hours' notice, if you so agree without pressure or coercion. For example, if your landlord (whom you feel is well motivated) has a maintenance problem that needs regular attending to—for example, a fussy heater or temperamental plumbing—you might want to work out a detailed agreement with the landlord allowing entry in specified circumstances.

Your landlord may also enter when you've given permission for an inspection or walk-through, at the end of your tenancy. (This procedure is covered in "Landlord's Duty to Return Deposit" in Chapter 13.)

Entry to Make Repairs

The law allows a landlord or repairperson, contractor, and so on to enter to make and assess the need for and cost of routine repairs or alterations. In this situation, however, the landlord must enter only during normal business hours and must first give reasonable notice. Customarily, "normal business hours" means 9 a.m. to 5 p.m., Monday through Friday, but no exact hours are specified in the statute. As we noted above, Civil Code Section 1954 contains a presumption that an advance notice of at least 24 hours is reasonable. However, you should understand that under the statute, the 24-hour notice period is presumed to be reasonable, but it is not absolutely required. If your landlord can establish a really good reason for it under the circumstances, giving a reasonable but shorter notice is legal.

EXAMPLE: If your landlord arranges to have a repairperson inspect a wall heater at 2 p.m. on Tuesday, she should notify you on or before 2 p.m. on Monday. But if she can't reach you until 6 p.m.—for example, you can't be reached at home or at work—less than 24 hours' notice is probably okay. Of course, if you consent to your landlord's plan, the notice period is not a problem.

In some situations, the 24-hour notice period will not be a problem, as you will be delighted that your landlord is finally making needed repairs and will cooperate with reasonable entry requirements. However, there are definitely situations when a landlord will be totally unreasonable, as would be the case when a repairperson simply knocks at your door with no advance notice at an inconvenient time and asks to make a nonemergency repair. If this occurs, you have a legal right to deny entry.

Your landlord can't legally use the right to access your unit in order to harass you. Repeated inspections, even when 24-hour notice is given, might fall into this category. To fight back in this situation, see below.

If you have a waterbed, a landlord may "inspect the bedding installation upon completion (of installation) and periodically thereafter, to ensure its conformity" with the standards a landlord may impose. (CC § 1940.5(g).)

Entry to Show Property

Your landlord may enter your property to show it to prospective tenants (toward the end of a tenancy) and to prospective purchasers when the property is on the market, as long as the landlord complies with the "business hours" and "reasonable notice" provisions discussed below.

Generally, normal business hours are considered 9:00 a.m. to 5:00 p.m., Monday to Friday. Some landlords (and their realtors) contend that for showing a property, "normal business hours" includes evenings and weekend open houses. The court in *Dromy v. Lukovsky,* 219 Cal.App.4th 278 (2013) seemed to say that weekend open houses were "normal business hours" in this context, but was also careful to protect the tenant's privacy rights by limiting the number of open houses to two per month. In any event, landlords and tenants can reach understandings on their own, as explained just below.

Unfortunately, problems often occur when an overeager real estate salesperson shows up on your doorstep without warning or calls on very short notice and asks to be let in to show the place to a possible buyer. In this situation, you are within your rights to say politely but firmly, "I'm busy right now—try again in a few days after we've set a time convenient for all of us." Naturally, this type of misunderstanding is not conducive to your peace of mind, especially if you fear that the landlord or real estate person may use a passkey to enter when you are not home. The realtor is still required to give you 24 hours' notice.

There are several ways to deal with this situation:

- You can stand on your rights and notify your landlord to follow the law or you will sue for invasion of privacy (see "What to Do About a Landlord's Improper Entry," below).
- You can work out a compromise with the landlord or realtor, agreeing to entry on certain specified days and times. For instance, Tuesday afternoons between noon and 2:00 p.m., or Thursday evenings between 7:00 p.m. and 9:00 p.m., plus one or two Sunday open houses per month, as agreed in advance. This way you both have firm schedules to work from.
- You can try to work out a compromise with your landlord by which you agree to allow the unit to be shown on shorter-than-24-hour notice in exchange for a reduction in the rent or other benefit. For example, you might agree in advance that two-hour notice is reasonable for up to eight house showings a month, in exchange for having your rent reduced $400 per month. This kind of tradeoff is perfectly logical—your rent pays for your right to treat your home like your castle,

and any diminution of this right should be accompanied by a decrease in your rent.

CAUTION

Under no circumstances should you allow your landlord to place a key-holding "lock box" on the door. This is a metal box that attaches to the front door and contains the key to that door. It can be opened by a master key held by area real estate salespeople. Because a lock box allows a salesperson to enter in disregard of the 24-hour notice requirement, it should not be used—period.

Written and Oral Notice

Except in cases of emergency entry or when you have abandoned the premises or otherwise moved out, the landlord must give you written notice of any intent to enter, including the day and approximate time, and the purpose. (Because the statute specifies "the date" that the landlord intends to enter, landlords cannot legally give you a range of dates, as in "between June 4 and June 8." (CC § 1954(d)(1).) The landlord may do this by delivering it personally to you, by leaving it with a responsible person at your home, or by leaving it on, under, or near the usual entry door. The landlord can also mail it to you, within six days of the planned entry.

Special rules apply when the landlord wants to enter to show your home to a prospective purchaser. If the landlord has advised you in writing of his intent to sell the premises within four months of his intended entry, and has told you that he or his real estate agent may be contacting you for the purpose of showing your rental, his oral notice (in person or by phone) will be sufficient. If delivered 24 hours before the intended entry, this oral notice will be presumed reasonable. The landlord or his agent must leave you a note that they were in your unit. (CC § 1954(d)(2).)

Finally, landlords and tenants can dispense with the written notice requirement if they agree that the landlord may enter without notice to make specified repairs or supply services, as long as the entry is no more than within one week after the agreement. For example, on Sunday you and your landlord could agree that she'll fix your dishwasher by the end of the week, and you might agree that she won't need to give you written notice of the precise day and time. That's valid as long as the landlord does the work by the next Sunday. If she doesn't get to it, she'll need to give written notice as explained earlier. (CC § 1954(d)(3).)

What to Do About a Landlord's Improper Entry

Suppose now your landlord does violate your rights of privacy—what can you do about it?

As you have probably figured out by now, it is one thing to have a right, and quite another thing to get the benefits of it. This is especially true for tenants who do not have a lease and do not live in a city where a rent control ordinance requires just cause for eviction. In this situation, if you set about aggressively demanding your rights, you may end up with a notice to vacate—and while you might ultimately prevail by showing that the landlord has acted illegally in retaliation, you'll have expended a lot of time, energy, and money proving your point. It is also generally true that you can rarely accomplish good results with hard words. This doesn't mean that you shouldn't be firm or determined, but rather, try not to be offensive.

Here is a step-by-step approach that usually works in dealing with a landlord who is violating your right to privacy:

Step 1: Talk to the landlord (or manager) about your concerns in a friendly but firm way. If you come to an understanding, follow up with a note to confirm it.

Step 2: If this doesn't work, or if your landlord doesn't follow the agreement that you have worked out, it's time for a tougher letter. A sample letter is shown below.

Sample Letter When Landlord Violates Privacy

June 13, 20xx

Roper Real Estate Management Co.
11 Peach Street
San Diego, CA 00000

Dear Mr. Roper:

Several times in the last two months, your employees have entered my apartment without my being home and without notifying me in advance. In no situation was there any emergency involved. This has caused me considerable anxiety and stress, to the point that my peaceful enjoyment of my tenancy has been seriously disrupted.

This letter is to formally notify you that I value my privacy highly and insist that my legal rights to that privacy, as guaranteed to me under Section 1954 of the Civil Code, be respected. Specifically, in nonemergency situations, I would like to have 24 hours' notice of your intent to enter my house.

I assume this notice will be sufficient to correct this matter. If you want to talk about this, please call me at 121-2121 between the hours of 9:00 a.m. and 5:00 p.m.

Yours truly,

Sally South
Sally South

Step 3: If, despite this letter, the invasions of your privacy continue, document them and either see a lawyer or take your landlord to small claims court.

One difficulty with a lawsuit against a landlord guilty of trespass is that it is hard to prove much in the way of money damages. Assuming you can prove the trespass occurred, the judge will probably readily agree that you have been wronged, but may award you very little money. Most likely, the judge will figure that you have not been harmed much by the fact that your landlord walked on your rug and opened and closed your door. However, if you can show a repeated pattern (and the fact that you asked the landlord to stop), or even one clear example of outrageous conduct, you may be able to get a substantial recovery. You can ask for up to $2,000 as a penalty, irrespective of other damages. (CC §§ 1940.2, 1942.5.) In this situation the landlord may be guilty of a number of "torts" (legal wrongdoings), including harassment (CCP § 527.6), breach of your implied covenant of quiet enjoyment (your right to enjoy your home free from interference by your landlord) (*Guntert v. Stockton,* 55 Cal.App.3d 131 (1976)), intentional infliction of emotional distress, and negligent infliction of emotional distress.

In a suit by a tenant alleging that a landlord was guilty of the intentional infliction of emotional distress, you'll need to prove four things:

1. outrageous conduct on the part of the landlord;
2. intention to cause or reckless disregard of the probability of causing emotional distress;
3. severe emotional suffering; and
4. actual suffering or emotional distress. (*Newby v. Alto Riviera Apartments,* 60 Cal. App.3d 288 (1976).)

If your landlord or manager comes onto your property or into your home and harms you in any way, sexually harasses you, threatens you, or damages any of your property, see an attorney. You should also report the matter to the police. Some California police departments have taken the excellent step of setting up special landlord-tenant units. The officers and legal experts in these units have been given special training in landlord-tenant law and are often helpful in compromising disputes and setting straight a landlord who has taken illegal measures against a tenant.

Landlords sometimes trespass when the tenant has failed to pay rent. The landlord, faced with the necessity of paying a lot of money to legally get a tenant to move out, may resort to threats or even force. While it may be understandable that a landlord in this situation should be mad at the tenant, this is no justification for illegal acts.

(See Chapter 14, "Illegal Self-Help Evictions.") All threats, intimidation, and any physical attacks on the tenant should be reported to the police. Of course, it is illegal for the landlord to come on the property and do such things as take off windows and doors, turn off the utilities, or change the locks. If this is done, the tenant should see an attorney at once. Do not overreact when a landlord gets hostile. While a tenant has the right to take reasonable steps to protect himself, his family, and his possessions from harm, the steps must be reasonably related to the threat. The wisest thing to do, whenever you have good reason to fear that you or your property may be harmed, is to call the police.

You should know that a landlord's repeated abuse of a tenant's right to privacy gives a tenant under a lease a legal excuse to break it by moving out, without liability for further rent.

Other Types of Invasions of Privacy

Entering a tenant's home without the tenant's knowledge or consent isn't the only way a landlord can interfere with the tenant's privacy. Here are a few other commonly encountered situations, with advice on how to handle them.

Health, Safety, or Building Inspections

The law concerning when, how, and why your landlord can enter your rented home is, as you have seen, fairly short, simple, and tenant-friendly. But the rules are different when it comes to entry by state or local health, safety, or building inspectors.

Neighbor's Complaints to Government Inspectors

If inspectors have credible reasons to suspect that a tenant's rental unit violates housing codes or local standards—for example, a neighbor has complained about noxious smells coming from the tenant's home or about his 20 cats—they will usually knock on the tenant's door and ask permission to enter. Except in the case of genuine emergency, you have the right to say no.

But your refusal will buy you only a little time in most cases, and you do not want the inspector to be against you before he or she has even seen your unit. Inspectors have ways to get around tenant refusals. A common first step (maybe even before the inspectors stop by the rental unit) is to ask your landlord to let them in. Many landlords will comply, although their legal authority to do so is questionable unless there is a genuine emergency. If inspectors can't reach the landlord (or if the landlord won't cooperate), their next step will probably be to get a search warrant based on the information from the complaining neighbor.

To obtain a warrant, the inspectors must convince a judge that the source of their information—the neighbor—is reliable, and that there is a strong likelihood that public health or safety is at risk. Armed with a search warrant, inspectors have a clear right to insist on entry. If they believe that a tenant will refuse entry, they may bring along police officers, who have the right to do whatever it takes to overcome the tenant's objections.

Random Inspections

Fire, health, and other municipal inspectors sometimes randomly inspect apartment buildings even if they don't suspect noncompliance. These inspections are allowed under some local ordinances in California. To find out whether your city has a program of random building inspections, call your city manager or mayor's office.

You have the right to say no to a random building inspection. If you do so, the inspector may request that a judge issue a search warrant, allowing the inspector to enter to check for fire or safety violations. Again, if there is any expectation that you may resist, a police officer will usually accompany the inspector.

An inspector who arrives when you are not home may ask your landlord to open the door on the spot, in violation of California state privacy laws. If the inspector has come with a warrant, the

landlord can probably give consent, since even you, the tenant, couldn't prevent entry. But what if the inspector is there without a warrant? A cautious landlord will ask an inspector without a warrant to enter after they have given you reasonable notice (presumed to be 24 hours) under state law.

Inspection Fees

Many cities impose fees for inspections, on a per unit or building basis or a sliding scale based on the number of your landlord's holdings. Some fees are imposed only if violations are found. If your ordinance imposes fees regardless of violations, your landlord may pass the inspection cost on to the tenant in the form of a rent hike. It's not illegal to do this, however, in rent controlled cities, the ordinance may severely limit the rent increase.

If your ordinance imposes a fee only when violations are found, your landlord should not pass the cost on to you if the noncompliance is not your fault. For example, if inspectors find that the owner failed to install state-mandated smoke alarms, the owner should pay for the inspection; but if you have allowed garbage to pile up in violation of city health laws, you should pay the inspector's bill.

The Police

Even the police may not enter a tenant's rental unit unless they can show you or your landlord a recently issued search or arrest warrant, signed by a judge or magistrate. The police do not need a search warrant, however, if they need to enter to

- prevent or stop a catastrophe or a serious crime
- apprehend a fleeing criminal suspected of a serious offense, or
- prevent the imminent destruction of evidence of a serious crime.

Putting "For Sale" or "For Rent" Signs on the Property

Occasionally, friction is caused by landlords who put "For Sale" or "For Rent" signs on tenants' homes, such as a For Sale sign on the lawn of a rented single-family house. Although a landlord may otherwise be very conscientious about respecting your privacy when it comes to giving 24 hours' notice before showing property to prospective buyers or renters, putting a sale or rental sign on the property is a virtual invitation to prospective buyers or renters to disturb you with unwelcome inquiries. There is little law on the subject of your rights in this situation. However, it is our opinion that as you have rented the unit, including the yard, the landlord has no right to trespass and erect a sign, and if your privacy is completely ruined by repeated inquiries, you may sue for invasion of privacy, just as if the landlord personally had made repeated illegal entries.

Keep in mind that with computerized multiple-listing services, many real estate offices can, and commonly do, sell houses and all sorts of other real estate without ever placing a For Sale sign on the property, except perhaps during the hours when an open house is in progress. If a real estate office puts a sign advertising sale or rental in front of the property you rent, you should at least insist that it clearly indicate a telephone number to call and warn against disturbing the occupant in words like, "Inquire at 555-1357—Do Not Disturb Occupant." If this doesn't do the trick and informal conversations with the landlord do not result in removal of the sign, your best bet is to simply remove it yourself and return it to the landlord, or to write the landlord a firm letter explaining why your privacy is being invaded and asking that the sign be removed. If the violations of your privacy continue, document them and consider suing in small claims court. Of course, you will want to show the judge a copy of the letter.

Allowing Others to Enter the Premises

Except in the circumstances set out above in "Permissible Reasons to Enter," your landlord has no right to enter your premises. It follows that the landlord also has no right to give others permission

to enter. This includes allowing someone to enter who professes to have your permission. For example, landlords are often asked to open the door to people claiming to be the tenant's best friend or long-lost relative. Careful landlords will insist that these stories be backed up by clear permission from you, in writing or by phone at least. If your landlord has given in to an appealing story without checking with you first, he'll be liable if there is property loss or a physical assault.

Giving Information About You to Strangers

Your landlord may be approached by strangers, including creditors, banks, and perhaps even prospective landlords, to provide credit or other information about you. As with letting a stranger into your home, this may cause you considerable anxiety. Basically, your landlord has a legal right to give out normal business information about you as long as it's factual. However, if your landlord spreads false stories about you—for example, says you filed for bankruptcy when this isn't true—and you are damaged as a result (your credit rating is adversely affected or you don't get a job), you have grounds to sue the landlord.

In addition, if a landlord or a manager spreads other types of gossip about you (whether or not true), such as who stayed overnight in your apartment or that you drink too much, you may be in good shape to sue and obtain a substantial recovery, especially if the gossip damages you. This is because spreading this type of information usually has no legitimate purpose and is just plain malicious. If flagrant and damaging, this sort of gossip can be an invasion of privacy for which you may have a valid reason to sue.

Calling or Visiting You at Work

Should an apparent need arise for your landlord to call you at work (say when your Uncle Harry shows up and asks to be let into your apartment), try to be understanding when you take the call, no matter how inconvenient it may be. However, situations justifying a landlord calling you at work are fairly rare. If a landlord calls you to complain about late rent payments or other problems, politely say that you'll discuss it when you're at home. If this doesn't work, follow up with a brief note. If the landlord persists or tries to talk to your boss or other employees about the problem, your privacy is definitely being invaded. Consider going to small claims court or seeing a lawyer.

Unduly Restrictive Rules on Guests

A few landlords, overly concerned about their tenants moving new occupants into the property, go overboard in keeping tabs on the tenants' legitimate guests who stay overnight or for a few days. Often their leases, rental agreements, or rules and regulations will require you to "register" any overnight guest. While your landlord has a legitimate concern about persons who begin as "guests" becoming permanent unauthorized residents of the property (see Chapter 2), it is overkill to require you to inform your landlord of a guest whose stay is only for a day or two. As with other subjects we mention in this chapter, extreme behavior in this area—whether by an owner or a management employee—can be considered an invasion of privacy for which you may have a valid cause of action.

CHAPTER 6

Major Repairs & Maintenance

Everywhere in California, you are legally entitled to rental property that meets basic structural, health, and safety standards and is in good repair. But suppose a landlord comes up short? When landlords fail to take care of important maintenance, you may have the legal right to use the "big sticks" in a tenant's arsenal—the rights to:

- withhold rent
- pay for repairs yourself and deduct the cost from the rent
- sue the landlord, or
- move out without notice.

This chapter describes your right to basic, important things, such as hot water, a floor that will not collapse under your feet, decent heat, and a roof that doesn't leak—in other words, your right to a safe and livable home. It also provides practical advice on how to get a reluctant landlord to perform needed repairs (and how to get them done yourself, using the big sticks mentioned above, if the landlord refuses). Less important maintenance and repair issues—such as unclogging kitchen drains or mowing the front lawn—are covered in the next chapter.

Your Basic Right to Habitable Premises

All landlords are legally required to make the premises habitable when they originally rent a unit, and to maintain it in that condition throughout the tenancy. In legal terminology, this is called "the implied warranty of habitability." The word "implied" means that by offering a residential rental, the landlord is promising you a habitable place to live—even if the landlord doesn't realize it.

Importantly, you have the right to a habitable rental even if you've willingly moved into a place that's clearly below habitability standards, or even if the lease or rental agreement you've signed states that the landlord doesn't have to provide a habitable unit.

In this chapter, we will be using the words "habitable" and "uninhabitable" frequently. They are often misunderstood and misused. Some think that a unit is "uninhabitable" if you cannot live in it at all. This is incorrect. "Uninhabitable" simply means that the property does not substantially comply with one or more of the state or local code requirements pertaining to premises rented for human occupancy. Conversely, "habitable" means that the unit is in compliance with all these standards—no more. The sections below describe the minimum requirements for habitability. We start with the more general requirements of the Civil Code, progressing to the more specific requirements of the Health and Safety Code and the Uniform Housing Code.

Conditions Covered By the Civil Code

The major California law defining habitable housing is Civil Code Section 1941.1 and Section 1941.3. According to these laws, at a minimum every rental must have:

- effective waterproofing and weather protection of roof and exterior walls, including unbroken windows and doors
- plumbing or gas facilities that conformed to applicable law in effect at the time of installation, maintained in good working order
- a water supply approved under applicable law that is under the control of the tenant, capable of producing hot and cold running water, or a system that is under the control of the landlord, that produces hot and cold running water, furnished to appropriate fixtures, and connected to a sewage disposal system approved under applicable law
- heating facilities that conformed with applicable law at the time of installation, maintained in good working order
- electrical lighting, with wiring and electrical equipment that conformed with applicable law at the time of installation, maintained in good working order
- building, grounds, and appurtenances at the time of the commencement of the lease or rental agreement, and all areas under control of the landlord, kept in every part clean, sanitary, and free from all accumulations of debris, filth, rubbish, garbage, rodents, and vermin

Housing Standards Under State Law

Rental housing standards established by Civil Code Sections 1941.1–.3, the State Housing Law and its implementing regulations, and the Uniform Housing Code (UHC) include:

- A structure that is weatherproof and waterproof; there must be no holes or cracks through which wind can blow, rain can leak in, or rodents can enter (CC § 1941.1).
- A plumbing system in good working order (free of rust and leaks), connected to both the local water supply and sewage system or septic tank. The landlord is not responsible for low pressure, contamination, or other failures in the local water supply—his obligation is only to connect a working plumbing system to the water supply (CC § 1941.1).
- A hot water system capable of producing water of at least 110 degrees Fahrenheit (CC § 1941.1 and UHC).
- A heating system that was legal when installed, and is maintained in good working order (CC § 1941.1) and capable of heating every room to at least 70 degrees Fahrenheit (UHC).
- An electrical system that was legal when installed, and which is in good working order and without loose or exposed wiring (CC § 1941.1). There must be at least two outlets, or one outlet and one light fixture, in every room but the bathroom (where only one light fixture is required). Common stairs and hallways must be lighted at all times (UHC).
- A lack of insect or rodent infestations, rubbish, or garbage in all areas (CC § 1941.1). With respect to the living areas, the landlord's obligation to the tenant is only to rent out units that are initially free of insects, rodents, and garbage. If the tenant's housekeeping attracts pests, that's not the landlord's responsibility. However, the landlord is obliged to keep all common areas clean and free of rodents, insects, and garbage at all times.
- Enough garbage and trash receptacles in clean condition and good repair to contain tenants' trash and garbage without overflowing before the refuse collectors remove it each week (CC § 1941.1).
- Floors, stairways, and railings kept in good repair (CC § 1941.1).
- The absence or containment of known lead paint hazards (deteriorated lead-based paint, lead-contaminated dust or soil, or lead-based paint disturbed without containment (CC § 1941.1; H&S § 17920.10). See Chapter 10 for more information.)
- Deadbolt locks on certain doors and windows (CC § 1941.3).
- Ground fault circuit interrupters for swimming pools (effective July 1, 1998), and antisuction protections on wading pools, excepting single-family residence rentals (effective January 1, 1998 for new pools and January 1, 2000 for existing pools) (H&S §§ 116049.1 and 116064).

Each rental dwelling must, under both the UHC and the State Housing Law, have the following:

- A working toilet, wash basin, and bathtub or shower. The toilet and bathtub or shower must be in a room that is ventilated and allows for privacy.
- A kitchen with a sink, which cannot be made of an absorbent material such as wood.
- Natural lighting in every room through windows or skylights having an area of at least one-tenth of the room's floor area, with a minimum of 12 square feet (three square feet for bathroom windows). The windows in each room must be openable at least halfway for ventilation, unless a fan provides for ventilation.
- Safe fire or emergency exits leading to a street or hallway. Stairs, hallways, and exits must be litter free. Storage areas, garages, and basements must be free of combustible materials.
- Every apartment building having 16 or more units must have a resident manager (25 CCR § 42).

Civil Code Section 1941.4 and Public Utilities Code Section 788 make landlords responsible for installing a telephone jack and placing and maintaining inside phone wiring.

Health and Safety Code Section 13113.7 requires smoke detectors in all multiunit dwellings, from duplex on up.

Health and Safety Code Sections 17916 and 17926.1 require carbon monoxide detectors in all dwelling units, and Health and Safety Code Section 13220 requires landlords to provide information on emergency procedures in all multistory buildings.

- an adequate number of appropriate receptacles for garbage and rubbish, in clean condition and good repair at the time of the commencement of the lease or rental agreement, with the landlord providing appropriate serviceable receptacles thereafter and being responsible for the clean condition and good repair of the receptacles under the landlord's control
- floors, stairways, and railings maintained in good repair
- deadbolt locks on certain doors and windows (CC § 1941.3) (see Chapter 11 for specifics), and
- No lead paint hazards (deteriorated lead-based paint, lead-contaminated dust or soil, or lead-based paint disturbed without containment). (CC §§ 1941.1 and 1941.3; H&S § 17920.10.)

What's a Nuisance?

A "nuisance" is defined under Civil Code Section 3479 as "anything which is injurious to health, including, but not limited to the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property...." This would include the presence of mold or other toxic substances, dangerous electrical wiring, drug dealing or other illegal activities, excessive noise or other disturbances, lack of heat or hot water, or foul odors from the garbage area.

California Health and Safety Code

Civil Code Section 1941.1 also includes the conditions listed in California Health and Safety Code Section 17920.3 as basic habitability requirements. Section 17920.3 provides more detail to the list of landlord obligations. For instance, subsection (a) discusses "adequate sanitation" to include such things as proper ventilation and the absence of dampness in the living spaces. Subsection (g) defines "weather protection" to include absence of falling plaster, cracked or dry rotted walls, roofs, or windows and lack of paint. Subsection (c) includes "any nuisance" as a substandard condition. This term is very broadly interpreted, as explained above.

Uniform Housing Code and Local Codes

Yet another source of law gives meaning to your right to a fit and habitable dwelling. The Uniform Housing Code, an industry code that is adopted by the state legislature and counties and cities (which may increase its requirements and protections), sets minimum standards. Many of them overlap the standards in the State Housing Law, above, but some are unique. If you haven't yet seen in the state statutes the maintenance problem that's bedeviling you, read on. Each rental dwelling must have:

- A working toilet, washbasin, and bathtub or shower. The toilet and bathtub or shower must be in a room that is ventilated and allows for privacy.
- A kitchen with a sink, which cannot be made of an absorbent material such as wood.
- Natural lighting in every room through windows or skylights having an area of at least one-tenth of the room's floor area, with a minimum of 12 square feet (three square feet for bathroom windows). The windows in each room must be able to be opened at least halfway for ventilation, unless a fan provides for ventilation.
- Safe fire or emergency exits leading to a street or hallway. Stairs, hallways, and exits must be litter free. Storage areas, garages, and basements must be free of combustible materials.
- Every apartment building having 16 or more units must have a resident manager. (25 CC § 42.)

Exemptions for Older Buildings

When a new housing code is adopted, or an old one changed, it doesn't necessarily mean that all existing buildings have to be upgraded. Especially when it comes to items that would involve major structural changes, lawmakers will often exempt older buildings by writing a "grandfather clause" into the code, exempting all buildings constructed before a certain date. Typically, however, a landlord who later undertakes major renovations or remodeling must comply with the new rules. If you suspect that major work is being planned or done without bringing the building up to code, contact your local housing department. If you fear landlord retaliation, do so anonymously, if possible. (Tenants' protections against retaliatory conduct are discussed in Chapter 14.)

Other new code requirements that are easy and inexpensive to make—for example, installing locks, peepholes, or smoke detectors—must be made regardless of the age of the building.

City or county building or housing codes are different from industry codes. They regulate structural aspects of buildings and usually set specific space and occupancy standards, such as the minimum size of sleeping rooms. They also establish minimum requirements for light and ventilation, sanitation and sewage disposal, heating, water supply (such as how hot the water must be), fire protection, and wiring (such as the number of electrical outlets per room). In addition, housing codes typically make property owners responsible for keeping hallways, lobbies, elevators, and the other parts of the premises the owner controls clean, sanitary, and safe.

Your local building or housing authority, and health or fire department, may have an informational booklet that describes the exact requirements your landlord must meet. In most urban areas, these local codes are more thorough than the state's general housing law—for example, some cities require landlords to install specific security items, such as peepholes, in exterior doors. However, local laws usually don't explain what you can do if your landlord fails to comply. To find out, you'll need to consult "How to Get Action From Your Landlord: The Light Touch," below.

Other Important Requirements

By now you have a pretty good idea of what your landlord must do (or refrain from doing) in order to live up to the duty to provide fit housing. Here are some other laws that, although important, don't fit within the "fit and habitable" category. This means that you can't use the remedies we discuss later in this chapter if your landlord fails to measure up (though you can take other steps, as explained in Chapter 7).

- Landlords are responsible for installing at least one telephone jack in their rental units, and for placing and maintaining inside phone wiring to that jack. (CC § 1941.4 and Public Utilities Code § 788.)
- Smoke detectors must be in all multiunit dwellings, from duplexes on up. Apartment complexes must also have smoke detectors in the common stairwells. (H&S § 13113.7)
- Landlords must install a carbon monoxide detector, approved and listed by the State Fire Marshal, in each dwelling unit having a fossil fuel burning heater or appliance, fireplace, or an attached garage. (H&S § 13263.)
- Landlords must provide information on emergency procedures in case of fire to tenants in multistory rental properties. (H&S § 13220.)
- Landlords must install ground fault circuit interrupters for swimming pools and anti-suction protections on wading pools, excepting single-family residence rentals. (H&S §§ 116049.1 & 116064.)

Fit and Habitable: Court Decisions

State legislators aren't the only ones who have weighed in on the subject of what constitutes habitable housing. Judges, too, faced with cases in which tenants didn't pay the rent because they felt that the premises were unlivable, have often written decisions that gave tenants extended rights. In fact, the whole notion of an implied warranty of habitability came from a court case, not from the legislature (that case was *Green v. Superior Court*, 10 Cal.3d 616 (1974)).

In evaluating whether a landlord is providing habitable housing, courts may also consider the weather, the terrain, and where the rental property is located. Features or services that might be considered nonessential extras in some parts of the country are legally viewed as absolutely necessary components of habitable housing in others. For example, in areas with severe winters, such as the Sierra, storm windows may be considered basic equipment.

Finally, keep in mind that the meaning of the term "habitable housing" is not static, and court decisions are made in light of changes in living conditions and technology. For example, these days courts consider the prevalence of crime in urban areas when determining what constitutes habitable housing; and the presence of mold may make some dwellings unfit. Good locks, security personnel, exterior lighting, and secure common areas are now seen, in some cities, to be as important to tenants as are water and heat. (Chapter 11 discusses your rights to adequate security measures.)

What if there is a Change of Ownership?

Whenever there is a new owner, the new owner "steps in the shoes" of the old owner. The fact that the former owner may have neglected the property does not alter the new owner's duty to provide habitable housing. (*Knight v. Hallsthammar* (1981) 29 Cal.3d 46.) This is true even if the property has been foreclosed by a mortgagor (a bank) or if it has been put into receivership. (*Erlach v. Sierra Asset Servicing, LLC* (2014) 226 Cal.App.4th 1281.)

Your Repair and Maintenance Responsibilities

You now know that you can expect your landlord to provide safe and habitable housing and adhere to norms of cleanliness and behavior under a variety of overlapping and specific legal rules. But your landlord isn't the only one with legal responsibilities. If you don't keep up your end of the bargain, at the least you can expect a deduction from your security deposit when you move out, for needed cleaning or repairs. Most importantly, you cannot claim the landlord breached the implied warranty of habitability if you violated any of the following obligations and that violation "contributed substantially" to the habitability problem. (CC § 1941.2.) State housing law requires you to:

- Keep your rental as clean and sanitary as the condition of the premises permits. For example, you cannot claim that the premises are not sanitary when you have failed to undertake routine cleaning.
- Dispose of all rubbish, garbage, and other waste in a clean and sanitary manner. For instance, if mice or ants invaded your kitchen because you forgot to take out the garbage before you left on a two-week vacation, you would be responsible for paying any necessary extermination costs.
- Properly use and operate all electrical, gas, and plumbing fixtures, and keep them as clean and sanitary as their condition permits. For example, bathtub caulking that has sprouted mold and mildew may render the tub unusable (or at least disgusting), but because proper cleaning could have prevented it, you are responsible. On the other hand, if the bathroom has no fan and the window has been painted shut, the bathroom will be hard to air out; resulting mildew might be your landlord's responsibility.

- Not permit anyone on the premises who, with your permission, willfully or wantonly destroys, defaces, damages, impairs, or removes any part of the structure or dwelling unit or the facilities or equipment—and of course, you yourself must not do any such thing.
- Occupy the premises as your home, using it only as it was designed or intended to be used for living, sleeping, cooking, or dining. For example, you can't use the dining room as a machine shop and then complain about the stains in the carpet.

What About Things You Break?

If you cause a serious habitability problem in your unit—for example, you carelessly break the sole toilet—you are responsible. A landlord who finds out about the problem can insist that you pay for the repair. Legally, you can't just decide to live without plumbing for a while to save money. If you drag your feet, the landlord can use your security deposit to pay for it, and if that isn't enough, sue you besides. Your landlord can't, however, charge you for problems caused by normal wear and tear—for example, a carpet that has worn out from use. (Chapter 13 discusses the difference between normal wear and tear and damage.)

Agreeing to Be Responsible for Repairs

As we've explained, you cannot waive (give up) your rights to habitable premises under Civil Code Section 1941 or 1942. Therefore, you cannot be made responsible for repairing any condition listed in those code sections unless your conduct "substantially contributed" to the condition. (For example, you failed to keep the place clean and you ended up with cockroaches). (CC § 1942.1.)

There is a rare exception to this rule. At the beginning of the tenancy, you and your landlord can agree, *in writing and before you move in*, that you are obligated to improve, repair, and/or maintain all or part of the premises as part of the consideration of the rental amount. In other words, you and the landlord can agree that in exchange for you doing maintenance and repairs, the landlord will charge you less rent. (CC § 1942.1, CC § 19453(b).) Landlords rarely attempt to use this provision because:

- The landlord still has the ultimate duty to comply with building, housing, health, and fire codes.
- Such a provision would not relieve the landlord of civil liability for any personal injury or property damage caused by a defective condition—so the landlord could be sued by a third party for the tenant's failure to keep the place safe.
- Most landlords want to be in control of the physical condition of the property.
- Many types of repairs (like roof repairs, major electrical or plumbing repairs, and structural repairs) would require the tenant to go outside the unit itself to fix it.

How to Get Action From Your Landlord: The Light Touch

Knowing that you have a legal right to habitable housing and getting it are, obviously, horses of very different colors. A lot depends on the attitude of your landlord—but some depends on your strategy, too. Here are some tips to maximize your chances of getting quick results, short of using the big sticks that we explain in the next section.

Put Repair Requests in Writing

By far the best approach is to put every repair and maintenance request in writing, keeping a copy for your files. You may want to call first, but be sure to follow up with a written request.

Written communications to your landlord are important because they:

- are far more likely to be taken seriously than face-to-face conversations or phone calls, because it's clear to the landlord you're keeping a record of your requests
- are less likely to be forgotten or misunderstood
- satisfy the legal requirement that you give your landlord a reasonable opportunity to fix a problem before you withhold rent or exercise other legal rights (see "What to Do If the Landlord Won't Make Repairs," below), and
- are evidence in case you ever need to prove that the serious problems with your rental were the subject of repeated repair requests.

In your request, be as specific as possible regarding the problem, its effect on you, what you want done, and when. For example, if the thermostat on your heater is always finicky and often doesn't function at all, explain that you have been without heat during the last two days during which the nighttime low was below freezing—don't simply say "the heater needs to be fixed." If the problem poses a health or safety threat, such as a broken front-door lock or loose step, say so and ask for it to be fixed immediately. Competent landlords will respond extra quickly to genuinely dangerous, as opposed to merely inconvenient, situations. Finally, be sure to note the date of the request and how many requests, if any, have preceded this one.

If your landlord provides a repair request form, use it. If not, do your own (email is a quick way to notify your landlord, and it provides a paper trail). (See the sample shown below.) Always make a copy of your request and keep it in a safe place in your files.

TIP

In dangerous situations, you must take precautions, too. Once you're aware of a dangerous situation, you must take reasonable steps to avoid injury. Don't continue to use the outlet when you see sparks fly from the wall; don't park in the garage at night if the lights are burned out and there is a safer alternative. If you don't take reasonable care and are injured and sue the landlord, you can expect a judge or jury to hold the landlord only partially responsible. (See Chapter 9.)

Sample Request for Repair or Maintenance

To: Kay Sera, Landlord,
Stately View Apartments

From: Will Tripp
376 Seventh Avenue,
Apartment No. 45
Appleville, CA 00000

Re: Roof leak

Date: March 10, 20xx

As I mentioned to you on the phone yesterday, on March 9, 20xx I noticed dark stains on the ceilings of the upstairs bedroom and bath. These stains are moist and appear to be the result of the recent heavy rains. I would very much appreciate it if you would promptly look into the apparent roof leak. If the leak continues, my property may be damaged and two rooms may become unusable. Please call me so that I'll know when to expect you or a repairperson. You can reach me at work during the day (555-1234) or at home at night (555-4546).

Thank you very much for your attention to this problem. I expect to hear from you within the next few days, and expect that the situation will be corrected within a couple of weeks.

Yours truly,

Will Tripp
Will Tripp

Deliver Your Repair Request to the Landlord

If your landlord has an on-site office or a resident manager, deliver your repair request personally. If you mail it, consider sending it certified (return receipt requested), or use a delivery service (such as Federal Express) that will give you a receipt establishing delivery. If you fax your request, ask for a call (or a return fax) acknowledging receipt. Although taking steps to verify delivery will cost a little more, it has two major advantages over regular mail:

- It will get the landlord's attention and highlight the fact that you are serious about your request.
- The signed receipt is evidence that the landlord did, in fact, receive the letter. You may need this in the event that the landlord fails to make the repair and you decide to do it yourself or withhold rent. If a dispute arises as to your right to use a self-help measure, you'll be able to prove in court that you satisfied the legal requirement of notifying the landlord first.

If your first request doesn't produce results—or at least a call or note from the landlord telling you when repairs will be made—send another. Mention that this is the second (or third) time you have brought the matter to the landlord's attention. If the problem is getting worse, emphasize this fact. If you have low hopes for any response and are beginning to think of your next move (a self-help remedy, as described below), you might mention your intent to use such a remedy. And, of course, be sure to keep a record of all repair requests.

Keep Notes on All Conversations

Besides keeping a copy of every written repair request (including emails), keep a record of oral communications, too. If the landlord calls you in response to your repair request, make notes during the conversation or immediately afterward; write down the date and time that the conversation occurred and when you made your notes. These notes may come in handy to refresh your memory and help you reconstruct the history of your case. In most situations, if a dispute ends up in court, and you are unable to remember the details of the conversation, your notes can be introduced to fill the gap. Don't tape-record the phone call—it's illegal unless the other side agrees. (Penal Code § 632.)

You can keep track of other kinds of communications, too. If your dealings with your landlord are accomplished online, print out the message.

Put the Landlord's Promises in Writing

If you and your landlord agree on a plan of action, it's especially wise to write down your understanding of this agreement. Send a copy to the landlord, inviting him to reply if he thinks that you have missed or misstated anything. If he doesn't write back, the law presumes that he agreed with your version of the conversation. (See the Sample Letter of Understanding Regarding Repairs, below.)

Sample Letter of Understanding Regarding Repairs

1234 Appian Way, #3
Beach City, CA 00000

September 3, 20xx

Ms. Iona Lott, Landlord
100 Civic Center Drive
Beach City, CA 00000

Dear Ms. Lott,

Thank you for calling me yesterday, September 2, 20xx, regarding my request for repairs, dated August 27, 20xx. In that request, I told you that the hot water in my unit is very hot (123 degrees F. on my thermometer), even though the temperature gauge on the water heater is turned down as far as it can go. I am concerned that my young daughter may be injured by this scalding water, and am anxious that the temperature be lowered as soon as possible.

As I understand it, you agreed to have Ralph, your handyman, come check the problem on Saturday morning, September 6, between 9 and 10 a.m. Ralph will bring along a new thermostat should he need to replace the old one.

Please let me know if your recollection of our conversation and plans differs from mine.

Yours truly,
Howard Hillman
Howard Hillman

What to Do If the Landlord Won't Make Repairs

If your persistent and businesslike requests for repairs are ignored, you can take stronger measures. Your options include:

- calling state or local building or health inspectors
- withholding the rent
- repairing the problem (or having it repaired by a professional) and deducting the cost from your rent
- moving out
- paying the rent and then suing the landlord for the difference between the rent you paid and the value of the defective premises, or
- if you live in a rent control city, you may be able to file a petition for reduction in services.

FORM

This chapter includes sample letters you can send your landlord when you intend to withhold rent or use the repair-and-deduct remedy. Or you can use the general Notice to Repair form included in Appendix C. The Nolo website includes a downloadable version of the Notice to Repair form (see Appendix B for a link to the forms in this book), which you can edit to fit your particular situation.

If the landlord hasn't fixed a serious problem that is a health or safety risk or a substantial inconvenience—rats in the kitchen, for example—you will want to take fast action. But before you use any of these big sticks, make sure that you can answer "Yes" to all of the questions in "Big Stick Prerequisites," below.

TIP

Before doing repairs yourself, withholding rent, or using another "big stick," get proof of how bad the problem was. Take pictures of the problem or ask others to view the problem and write a description. Also consider asking an experienced and impartial contractor or repairperson to examine the situation and give you a written description of the problem and estimate for repair. Be sure the description is signed and dated.

Report Code Violations to Housing Inspectors

A local building, health, or fire department usually gets involved when a tenant complains (a change in ownership or owner financing may also trigger an inspection). The agency inspects the building and, if problems are found, issues a deficiency notice that requires the owner to remedy all violations. A landlord who fails to comply can face civil and criminal penalties—including not being able to evict a tenant of the property for nonpayment of rent. (H&S §§ 17997 to 17997.5.)

Many of the agencies who conduct these inspections are lax in their enforcement, from understaffing or for other reasons. It's important for you to establish a good relationship with the inspector from the start. Tell the inspector about the problem or problems and how you are affected, but don't be pushy. Also ask what can be done to fix the problem and how the inspector can help. Inspectors do not like to feel like they are in the middle of a landlord-tenant dispute (even though they are), so focus your conversation on getting the repairs made and not what a bad person the landlord is.

If you decide to complain to building, health, or fire inspectors, start with an Internet search of local government agencies, such as building, housing inspection, or health departments. If you do not have Internet access, a call to your local supervisor or city council member should be productive. Also, look for a local tenants' rights group.

You may be wondering whether the landlord can evict you for calling the building inspectors. You're not alone in your worry. This type of landlord behavior is called "retaliation" and is strictly forbidden. Civil Code Section 1942.5 prohibits a

Big Stick Prerequisites

Before you take drastic action, such as withholding the rent or moving out, be sure you can say "Yes" to each question below:

- **How serious is the problem or problems?** Not every building code violation or annoying defect in your rental home (like your water heater's ability to reach only 107 degrees F, 3 degrees short of the code-specified 110 degrees) justifies use of a "big stick" against the landlord. In other words, be sure that this is a true habitability problem.
- **Did someone other than you or a guest cause the problem?** If you're at fault, you shouldn't pursue the self-help options.
- **Did you tell the landlord about the problem and give him a reasonable opportunity to get it fixed?** The landlord has 30 days under state law or less if the circumstances warrant prompter attention.
- **At the end of your lease (or of the month, if you're renting month to month), are you willing to risk termination of your tenancy by an annoyed landlord?** Although your landlord may not legally retaliate against you by raising the rent or terminating your tenancy, many landlords do so anyway. Your only recourse would be to refuse to move (or refuse to pay the higher rent), but that risks an eviction. Even if you prevail, it will involve a lot of time and effort. (Chapter 15 discusses fighting evictions.)
- **Are you willing to risk eviction if a judge decides that you shouldn't have used the big stick?** For example, if you withhold rent, the landlord may sue to evict you based on nonpayment of rent. Even if you're sure that your course of action was justified, a judge may decide otherwise. The experience will take time, effort, and money. And if you go through the eviction case and lose, a negative mark on your credit record may cause serious problems for future rentals, loans, and employment.
- **If you move out, can you find a comparable or better unit?** If the building is closed following deficiencies you've reported to inspectors, your landlord must help you with relocation expenses, but it will be a hassle to get the money (and to move). (H&S § 17980.7.)

landlord from evicting, raising rent, or any other like conduct, in retaliation for the tenant's exercise of his or her rights under the law. In such a case, a tenant will have a solid defense to an eviction or a rent increase. In addition, the tenant will have the right to sue the landlord for retaliation and can recover actual damages, statutory damages, punitive damages, and attorney fees.

Withhold the Rent

If you conclude that your landlord has not met the responsibility of keeping your unit livable, you may be able to stop paying any rent to the landlord until the repairs are made. Before you can properly withhold the rent, be sure that you can say "Yes" to the questions in "Big Stick Prerequisites," above.

When you withhold rent, you simply stop paying rent until the landlord fixes the problem (at least two cities, however, have established escrow programs for tenants who withhold rent, as described in Step 1, below). The theory is that the landlord will be powerfully motivated to do the repair when the rent has stopped coming in. Once the rental is habitable, you begin paying rent. You will also owe the landlord a portion of the withheld rent, which reflects the value of the rental in its unfit condition (see "Paying the Landlord for the Value of the Unfit Rental," below, for methods of computing the proper amount).

CAUTION

Be sure you're ready to risk your tenancy. We can't say it enough times: Before withholding rent, be sure your ducks are in order and you are willing to risk an eviction lawsuit. If you can address the problem without incurring that risk (such as by suing in small claims court), you may be better off.

The Rent Withholding Steps

Here are the steps to follow when you've decided to withhold rent.

Step 1: We strongly encourage all of you to set aside the money that you would otherwise be paying for rent—and not to spend it until the matter is resolved. Under state law, you are not required to set up either a formal "escrow" account, or a separate account, but having a separate account is an easier way to keep track of the money. Segregating the funds is better assurance that you won't spend them, and if the case goes to trial, it's a way of showing the other side that you are withholding the rent because of the habitability problems, rather than for your own financial benefit. In a few cities, including Los Angeles, when landlords haven't complied with repairs ordered by building or health inspectors, the city can impose a rent escrow. Tenants pay rent directly to the city, which can authorize distributions for the purposes of repair only. Check your local ordinances to see if a rent escrow ordinance applies to you.

Step 2: Notify your landlord of your intent to withhold the rent. Hopefully, you've followed our suggestions and sent written repair requests to your landlord. You may have already signaled your intent to withhold the rent if the problem isn't fixed. If you haven't yet, now's the time to give your landlord written notice of the problem and your intent to withhold rent. A sample letter is shown below. In your letter, refer to the California case (*Green v. Superior Court,* 10 Cal.3d 616 (1974)) that allows withholding. Send the letter "return receipt requested."

FORM

In addition to the sample letter shown below, you can use the Notice of Rent Withholding form included in Appendix C. The Nolo website includes a downloadable version of the Notice of Rent Withholding form (see Appendix B for a link to the forms in this book), which you can edit to fit your particular situation.

Step 3: Collect evidence. In case your landlord tries to evict you for nonpayment of rent, you will want to prepare your defense from day one. You'll need to prove that the problem truly is serious and that you complied with the notice requirements of the rent withholding law. Of course, you'll want to keep notices from the building inspectors, copies of all correspondence with the landlord, plus photographs of the problem. Be sure to consider other ways (besides your own testimony) you can convince the judge that the problem was real and serious. For example, if your heater delivers a frigid blast, you'll want an estimate from a heating repairperson that corroborates the fact that the heater doesn't work.

In Superior Court, where evictions are handled, you cannot simply present a repairperson's written description of the problem (as you could in small claims court). For this reason, when choosing your repairperson/witness, pick someone who you think will come to court to testify about the nature of the problem.

Step 4: Repeat your request for repairs. If the landlord hasn't responded satisfactorily to your first letter, give the landlord one last deadline—say, 48 hours or whatever period you feel is reasonable under the circumstances.

Step 5: Set the rent aside. We recommend that you deposit the withheld rent into a separate account. This will dispel any suggestion that you are withholding rent simply in order to avoid paying it.

You can try asking a mediation service if it will establish an account for this purpose. Or, if you have an attorney, ask your lawyer to deposit the withheld rent in the lawyer's "trust account."

You can also set up a separate bank account of your own and use it only for withheld rent. If you must pay for any of these services, you can ask the court to order the landlord to reimburse you if the landlord brings an eviction action (or you can deduct the cost of the escrow from the reduced rent you'll pay the landlord upon completion of the repairs, as explained below).

Sample Letter Telling the Landlord You Intend to Withhold Rent

58 Coral Shores, #37
Shady Bay, CA 00000
407-555-5632

August 5, 20xx

Mr. Roy Hernandez
3200 Harbor Drive
Shady Bay, CA 12345

Dear Mr. Hernandez:

My family and I are your tenants at the above address. As you know, I called you on August 3, 20xx to report that the front porch has collapsed from dry rot at the top of the stairs, making it impossible to enter the flat except by climbing through a front window. You assured me that you would send a contractor the next day. No one came on August 4.

Under California Civil Code Section 1941.1, you are responsible for keeping the porch in good repair. California law gives tenants the right to withhold rent if your failure to make repairs renders the rental uninhabitable. (*Green v. Superior Court*, 10 Cal.3d. 616 (1974).) The absence of a front entrance makes our house unfit.

By hand-delivering this notice to you today, August 5, I am giving you reasonable notice as required by law. If the porch is not repaired by August 10, I will withhold rent until it is.

Yours truly,

Alicia Sanchez
Alicia Sanchez

Your Landlord's Response

If a court or housing authority is holding your withheld rent, as in Los Angeles or Sacramento, your landlord cannot file an eviction action against you based on nonpayment of rent. The landlord can ask for release of some of the withheld rent to pay for repairs. While repairs are being made, you might be told to continue to pay the entire rent to the court or housing authority, or you may be directed to pay some rent to the landlord and the balance to the court or housing authority. When the dwelling is certified as fit by the local housing authorities or the court, any money in the account is returned to the landlord, minus court costs, inspection fees, and any money you get to keep (reflecting the lowered value of the rental while it was substandard).

If there is no city-sponsored escrow, the landlord may send you a three-day notice to pay rent or vacate, followed by a Summons and Complaint (an eviction lawsuit). In your Answer to the Complaint, you can raise the unfitness of the rental as an "affirmative defense" to the eviction suit. (Affirmative defenses to evictions are covered in Chapter 15.)

Paying the Landlord for the Value of the Unfit Rental

Many tenants make the unfortunate mistake of thinking that if they withhold the rent correctly, they won't have to pay anything for the months they endured an unfit rental. This is not so. Unless you've had to move out because of the repair problem, you owe the landlord the reasonable rental value of the rental in its unfit state, during the time you withheld rent. In legalese, this is a retroactive rent "abatement," or reduction.

You may get retroactive rent abatement through a court process (if the landlord has filed for eviction, but you've prevailed because the unit was unfit), or through negotiation with your landlord (when no court is involved). Here's how a judge will determine how much the landlord should compensate you for

the inconvenience of having lived in a substandard rental unit. If a court is not involved, you can use this same system in negotiating with your landlord.

Market value. One way to determine how much rent you owe for a substandard rental is to ask: What's the fair market value of the premises in that condition? For example, if an apartment with a broken heater normally rented for $1,200 per month but was worth only $600 without operable heating, the landlord would be entitled to only $600/month from the withheld rent. Of course, the difficulty with this approach—as with many things in law—is that it is staggeringly unrealistic. An apartment with no heat in winter has no market value, because no one would rent it. As you can see, how much a unit is worth in a defective condition is extremely hard to determine. This method is not appropriate in a rent control or other situation where your rent is below market. In that situation, the percentage reduction method should always be used.

Percentage reduction. A more sensible approach is to start by asking how much of the unit is affected by the defect, and then to calculate the percentage of the rent attributable to that part. For example, if the roof leaked into the living room of your $900/month apartment, rendering the room unusable, you could reduce the rent by the percentage of the rent attributable to the living room. If the living room is the main living space and the other rooms are too small to live in comfortably, the percentage of loss would be much greater than it would be in more spacious apartments. Obviously, this approach is far from an exact science, too.

Sometimes, the calculations will be simple—for example, using the fair market value approach, if a broken air conditioner reduces your flat to an oven, its rental value can be determined by consulting ads for non–air-conditioned flats in your area. The percentage reduction method might, in some situations, yield a lower rental value. After you've used both methods, ask the judge to adopt the lower figure (or negotiate for that figure when dealing directly with your landlord) and to rule that the landlord is entitled only to that amount of rent per month, times the number of months that you endured the substandard conditions. The difference between the full rent and the realistic rent should go to you.

CAUTION

You must pay the retroactive, abated rent within five days of winning an eviction lawsuit. If you don't pay on time, the landlord will win and you'll be evicted. The lesson is clear: When withholding rent, keep it in a safe place (such as an escrow account) so that you can promptly pay the abated rent.

EXAMPLE: When Henry and Sue moved into their apartment, it was neat and well maintained. Soon after, the building was sold to an out-of-state owner, who hired an off-site manager to handle repairs and maintenance. Gradually, the premises began to deteriorate. At the beginning of May, 15 months into their two-year lease, Henry and Sue could count several violations of the building code, including the landlord's failure to maintain the common areas, remove the garbage promptly, and fix a broken water heater.

Henry and Sue sent numerous requests for repairs to their landlord over a two-month period, during which they gritted their teeth and put up with the situation. Finally they had enough and checked out their local rent withholding law. They learned a tenant could pay rent into an escrow account set up by their local court. Henry and Sue went ahead and deposited their rent into this account.

In response, Henry and Sue's landlord filed an eviction lawsuit. In their defense, Henry and Sue pointed to the numerous code and habitability violations. The court agreed with the couple, did not allow the eviction, and ordered the following:

- During the time that they lived in these uninhabitable conditions, Henry and Sue were not required to pay full rent. Using the "market value" approach, the court decided that their defective rental was worth half its stated rent.

Accordingly, since the landlord owed them a refund for portions of their rent for May and June, Henry and Sue would be paid this amount from the escrow account.
- The balance of the rent in the account would be released to the landlord (less the costs of the escrow and the tenants' attorney fees), but only when the building inspector certified to the court that the building was up to code and fit for human habitation.
- Henry and Sue could continue to pay 50% of the rent until needed repairs were made and certified by the building inspector.

Make Repairs and Deduct the Cost—"Repair and Deduct"

A far better option is to use the "repair and deduct" remedy. It is quicker, safer, gets the job done, and you are less likely to find yourself in court. Furthermore, the law explicitly states that a landlord cannot retaliate against you because you have exercised this right. (See CC §§ 1942 and 1942.5.) It works like this: If you have tried and failed to get the landlord to fix a serious defect that renders your rental unfit, you can hire a repairperson to fix it (or buy a replacement part and do it yourself) and subtract the cost from the following month's rent. You can't spend more than one month's rent, and cannot use this remedy more than twice in any 12-month period. If the repair or replacement problem is the result of your failure to use the rental with ordinary care, or if it concerns a matter that you're responsible for (such as maintaining the unit in a clean and sanitary state), you cannot use this remedy.

When to Use Repair and Deduct

Repair and deduct's restrictions on how much you can spend (and how often) make the remedy a poor choice for tenants when it comes to expensive projects such as a major roof repair. Obviously, if you're limited to a twice-a-year expenditure of your monthly rent, you are not going to be able to pay for a $20,000 roof job. Sometimes, however, a number of tenants might pool their dollar limits to accomplish a costly repair. However, as we've explained, a major repair is one that remedies a habitability problem, regardless of its cost. There may be times when a relatively inexpensive job will turn an unfit rental into a habitable one. In these situations, if you're confident that you can competently choose a repairperson or replacement part, you will probably be better off using this remedy instead of withholding the rent. Here's why:

- **It's faster.** Because you'll be doing the work or supervising its completion, you can get going right away (after you've given the landlord time to do it himself, as explained below). With rent withholding, you'll have to wait for the landlord to do the work. Secondly,
- **When the job is not costly, it's less risky.** When you use this remedy, you will give your landlord a short rent check. The landlord can serve you a three-day notice to pay or vacate, then file for eviction on that basis, if she feels you've used the remedy improperly. But she'll be less likely to do so if the check she gets is short by only a portion of the monthly rent, instead of not receiving any check at all, which happens with rent withholding.

The Repair and Deduct Steps

Follow these steps when deciding to use the repair and deduct remedy.

Step 1: Notify your landlord in writing of the problem and give him a reasonable time to fix it. If you've tried gentle persuasion, as suggested above, you've already taken this step. It doesn't hurt to write again, however, and signal your intention to invoke your right to repair and deduct. As ever, be sure to keep copies of your letters, and send them "return receipt" so that the landlord cannot claim later that he didn't receive them.

The big question here is: What's a "reasonable time" for the landlord to take action? Under the statute, 30 days is "presumed" reasonable. This means that if you wait 30 days, the landlord will

have the burden of convincing a judge that your subsequent use of the remedy was too hasty. However, in some situations, a shorter time would also be reasonable, and you could act sooner than 30 days if circumstances warrant. For example, no heat in the midst of a cold spell requires a faster response than a finicky heater in the summer time; and a broken front-door lock in an iffy neighborhood is worthy of immediate attention—in some situations, no more than a few hours would be a reasonable time to wait before handling the problem yourself.

Step 2: Collect evidence. In case your landlord tries to evict you for nonpayment of rent, you will want to prepare your defense from day one. See the same advice under Step 3 in "Withhold the Rent," above.

Step 3: Gather bids or collect pricing information. By choosing to use this remedy, you're doing the landlord's job for him. Put yourself in his shoes and approach the job as if the property belonged to you. While you don't have to hire the cheapest laborer or firm in the phone book, you do need to pay attention to cost. At the same time, the quality of the work needs to be in keeping with the standards that the landlord applies to the rest of the property. For example, if you're looking for a furnace repairperson, it might make sense to use an authorized repair shop if you know that the landlord consistently chooses "safe" repairmen. On the other hand, a handyman might be just fine if the landlord himself does the work (when he does it) or hires handymen himself.

Save your research or bids in a safe place. You may need them should the landlord challenge you on your choice and whether you made a good faith effort to secure the best deal.

Step 4: Attach copies of the bills, receipts, or invoices, plus evidence that you have paid them, to your next rent check, with a letter explaining why the rent is reduced. Do not reduce the rent until you have done the work and paid for it.

Sample Letter Telling the Landlord You Intend to Repair and Deduct

8976 Maple Avenue
Katyville, CA 00000
360-555-6543

January 14, 20xx

Hattie Connifer
200 Capitol Expressway, Suite 300
Katyville, CA 00000

Dear Ms. Connifer:

On January 10, I called your office and spoke to you about a major problem: I have no hot water. As I explained on the phone, on the evening of January 9 the water heater for my flat sprang a leak. Luckily, I was home and was able to divert the water to the outside with a hose, turn off the intake valve, and shut off the pilot.

At the end of our conversation on January 10, you assured me that you would send a repairperson to the flat the next day, January 11. As of today, no one has showed up, and I am enduring my fourth day of no hot water.

Under California law, I am entitled to remedy the problem and deduct the cost from my rent if you do not attend to the problem within 24 hours (California Civil Code §§ 1941–1942.5). I intend to do this if the heater is not replaced within 24 hours after you receive this letter, which I am personally delivering to your office.

Yours truly,

Wanda Wright
Wanda Wright

Stay or Go? Consider the Practicalities

You may find that the choice of whether to declare the tenancy at an end or to move out while repairs are made is up to you. Consider the following issues:

Terminate the lease or rental agreement. You'll want to terminate the rental if you can find new housing of comparable quality and cost. You won't have to live with the uncertainty of when you'll move back to the original dwelling, and it will save you the time and aggravation of an extra household move. And if your new housing comes with a lease, you may have to terminate the old one, since a lease won't allow you to move when you want.

If you decide to terminate the original lease or rental agreement, finalize the decision in writing. Have the landlord write "Terminated" on each page of your lease or rental agreement. Both of you should sign and date each page. Your landlord should refund your security deposit according to normal procedures. (See Chapter 13.)

Leave temporarily without terminating the lease. If your rental is a particularly great deal, the local market is very tight, or the repairs can be accomplished within a reasonable time, you'll want to hang on to your unit. If you are protected by rent control and you have lived in your rental for a significant period of time, you'll probably be loath to move. (Check your rent control ordinance for any special rules dealing with temporary move-outs.) Find a month-to-month rental while the original unit is repaired.

You and the landlord should add a page to the lease entitled "Suspension" that states that the landlord's and tenant's responsibilities have been suspended from a certain date until the day you move back in. Be sure to include the landlord's promise to notify you promptly as soon as the rental is ready. If the landlord will help you with relocation costs, note them. Both of you should sign and date this document.

Move Out When Repairs Haven't Been Done

If your dwelling isn't habitable and hasn't been made so despite your complaints and repair requests, you also have the right to move out. This will discharge you from any further obligations under the rental agreement or lease. (CC § 1942(a).) This drastic measure is justified only when there are truly serious problems, such as the lack of essential services, or the presence of environmental health hazards such as lead paint dust. Chapter 10 explains your right to move out because of environmental toxins.

Your right to move out of a seriously unfit dwelling is borrowed directly from consumer protection laws. Just as the purchaser of a significantly defective car may return the car for a refund, you can consider the housing contract terminated and simply return the rental unit to the landlord if the housing is unlivable.

The law, of course, has a convoluted phrase to describe this simple concept. It's called "constructive eviction," which means that the landlord, by supplying unlivable housing, has for all practical purposes "evicted" you. Once you have been constructively evicted (that is, you have a valid reason to move out), you have no further responsibility for rent.

Before moving out, you must give the landlord notice of the problem and a reasonable opportunity to fix it. Refer to Steps 1 and 2 in "The Repair and Deduct Steps," above, for guidance on how to proceed.

If you move out permanently because of habitability problems, you may want to sue the landlord (in small claims court) to compensate you for your losses. For example, you may be able to recover moving expenses and the cost of a hotel for a few days until you find a new place. Also, if the conditions were substandard during prior months when you did pay the full rent, you may sue to be reimbursed for the difference between the value of the defective dwelling and the rent paid.

In addition, if you are unable to find comparable housing for the same rent and end up paying more rent than you would have under the old lease, you may be able to recover the difference. (See "Sue the Landlord," below.)

Move Out When the Premises Have Been Destroyed

If your home is totally damaged by natural disaster or any other reason beyond your control, which obviously renders it unlivable, you have the legal right to consider the lease or rental agreement at an end and to move out without responsibility for future rent. (CC § 1933(4).) You are not, however, entitled to reimbursement for rent payments you've already made. (*Pedro v. Potter,* 197 Cal. 751 (1926).)

TIP

If you have renters' insurance, file a claim. You may get help for resettlement costs and coverage for your lost or destroyed possessions. Coverage may not extend to destruction caused by floods or earthquakes. (Renters' insurance is covered in Chapter 16.)

Partial destruction, however, is another matter. If you must find another place to live because of partial damage to or destruction of the premises—no matter the cause—you and the landlord will face the question of whether to terminate the lease or rental agreement or just suspend it while repairs are made. Your course of action depends on whether your lease or rental agreement addresses this eventuality (if it doesn't, state law takes over).

Check Your Lease or Rental Agreement

First, check your lease or rental agreement for a clause covering what happens if the premises are partially damaged or destroyed. The rental document may give the landlord the right to terminate your rental or merely suspend it while repairs are made. If the landlord decides to keep the lease or rental agreement alive during repairs, you won't have to pay the landlord rent while you're living elsewhere, but it is unlikely that you'd get rental assistance from the landlord if your replacement housing is more expensive than your regular rent. Or, your landlord can declare the rental to be over (even if you'd rather move out temporarily). If you disagree with the landlord's call, there is probably very little you can do. Contact an attorney if you have a strong reason to return to the premises. Also, if the destruction was due to a fire and the landlord was at least partially at fault, it would be a good idea to contact an attorney to see if a lawsuit is feasible.

Default Rules for Partially Destroyed Rentals

Most residential rental agreements and leases do not include clauses that deal with the partial destruction of the property. If your rental documents are silent on the issue, the fate of your rental will depend on the application of the facts of your situation to state law, which provides that the lease or rental agreement will terminate if:

- the destruction is not the fault of the tenant
- the landlord had reason to believe, when the lease or rental agreement was signed, that the destroyed portion or aspect of the rental premises was a "material inducement" to the tenant (that is, a major reason why the tenant rented the premises), and
- the tenant gives notice to the landlord that he considers the lease to be over because of the destruction of an important aspect of the premises. (CC § 1932(2).)

EXAMPLE: Sandra wanted a rental with a large, fenced yard that would be a safe play area for her three small children. When she saw Alex's duplex, she was delighted at the spacious backyard and told him that it was the perfect answer to her needs. When he offered to show her another duplex that had no yard but a larger interior, she declined and told him that her most important requirement was the yard, and that she would make do with smaller rooms. Sandra signed a year's lease in late fall.

The weather that winter was exceptionally severe, and the rainstorms caused the hill behind Sandra's home to slide, burying the backyard in a foot of mud and crushing the fences. Although the house itself

escaped damage, the yard was ruined. Sandra wrote to Alex to tell him that she considered the lease to be over, since the backyard, now unusable, was a major reason for her decision to rent. Sandra moved out and although she did not recover the balance of that month's rent, she was not responsible for any future rent. She got her entire security deposit back when Alex examined the house and determined that there was no damage beyond normal wear and tear.

Sue the Landlord

A consumer who purchases a product—be it a car, a hair dryer, or a steak dinner—is justified in expecting a minimum level of quality, and is entitled to compensation if the product is seriously flawed. The same goes for tenants. If your rental is not habitable, you can sue the landlord—whether or not you move out. You can use small claims court, which allows claims of up to $10,000, or hire an attorney and file in Superior Court. You can sue whether or not you move out of the property. Your landlord cannot retaliate against you because you have filed a lawsuit.

In your small claims lawsuit, you ask the judge to rule that your unrepaired rental was not worth what you've paid for it. You want to be paid the difference between the monthly rent and the real value of the unit, times the number of months that you've lived with the substandard conditions. In short, you'll ask for a retroactive rent decrease—what we explained as a rent abatement above in "Withhold the Rent." In addition, you can sue your landlord for:

- the value of lost or damaged property—for example, furniture ruined by water leaking through the roof
- compensation for personal injuries—including pain and suffering—caused by the defect (see Chapter 9), and
- your attorney fees and court costs if you had to hire a lawyer to sue the landlord (Chapter 18 discusses attorney fees).

You'll probably want to ask the court for an order directing the landlord to repair the defects, with rent reduced until they are fixed. But in Small Claims Court, judges can only order the landlord to pay you for your losses. In practice, usually the money judgment gets the landlord's attention and repairs follow soon thereafter.

If your rental has significant and longstanding habitability problems, or if there are other aggravating factors (such as retaliation by the landlord), you may be able to convince a lawyer to take your case. In Superior Court, you could sue for the damages outlined above. In addition, you can sue for "tort" damages, such as discomfort and annoyance, emotional distress, lost earnings, and punitive damages. (*Stoiber v. Honeychuck,* 101 Cal.App.3d 90 (1980).) Furthermore, even if your rental agreement does not provide for attorney fees, some statutes do provide for attorney fees if certain situations apply (for example, CC § 1942.4, where a violation cited by a building, housing, or health inspector has not been corrected for more than 35 days; or CC § 1942.5, concerning retaliation). Time limits (called "statutes of limitations") govern how long you have to file these lawsuits, so you are encouraged to explore this alternative sooner rather than later.

Reduction in Services Petition

Many of the rent control ordinances throughout California allow tenants file "reduction in services" petitions when the landlord fails to properly maintain the premises in habitable condition. So instead of going to court to get the "retroactive rent abatement" discussed previously, a tenant need only go to the local rent board and file a petition for a reduction in services.

A reduction in services petition is a much safer route because you are not involved in an eviction lawsuit. Instead, you attend a hearing to determine how much the landlord owes you. The tenant has the burden of showing that the conditions existed, when they started, and when the landlord was notified. The hearing officer will then make a determination as to the amount of reduced rent. (See Appendix A for information about rent control in your area, and contact the rent board for information about how to proceed.)

CHAPTER 7

Minor Repairs & Maintenance

Ask a group of tenants which rental problem is most annoying, and chances are you'd hear, "Repairs!" Most wouldn't be referring to major problems that make a unit unlivable. What really bugs tenants are the day-to-day but nonetheless important problems: leaky faucets, malfunctioning appliances, security devices that don't work, worn carpets, noisy heaters, hot water heaters that produce a pathetic quantity of tepid water, and dozens of other frustrating breakdowns.

Unfortunately, if your landlord refuses to attend to minor repairs, you don't have much legal clout. You can't withhold rent, move out, or use most of the other "big stick" legal weapons discussed in Chapter 6. Even so, there are several proven strategies for getting results.

Minor Repairs: What Are They?

If a landlord balks at making repairs, your first step is to decide whether the problem is major (affecting the habitability of your rental unit) or minor. This distinction is necessary because you have different legal options depending on your conclusion.

Minor repair and maintenance includes:

- small plumbing jobs, like replacing washers and cleaning drains
- system upkeep, like changing heating filters
- structural upkeep, like replacing excessively worn flooring
- small repair jobs like fixing broken light fixtures or replacing the grout around bathtub tile, and
- routine repairs to and maintenance of common areas, such as pools, spas, and laundry rooms.

Don't assume that inexpensive repairs are always minor repairs. Sometimes an extremely important repair costs very little. For example, if the only thing between you and a heated apartment is the replacement of a $45 furnace part, like a thermostat, the repair is "major" because an unheated dwelling is uninhabitable, even though the repair cost is insignificant. And because this is true, if the landlord didn't replace the part promptly, you would probably be entitled to withhold rent or use one of the other "big stick" strategies discussed in Chapter 6. By contrast, replacing the living room carpet, which is worn but not a hazard, will be very expensive, but will be considered a minor repair if the consequence of not replacing it is less than an unfit dwelling.

Most often, minor repairs are the landlord's responsibility. But landlords are not required to keep the premises looking just like new—ordinary wear and tear does not have to be repaired during your tenancy. (When you move out, however, the cost of dealing with ordinary wear and tear will fall on the landlord and cannot come out of your security deposit.)

The Landlord's Responsibilities

Not every minor problem is your landlord's legal responsibility. If you or one of your guests caused it, carelessly or intentionally, you are responsible for repairing it—or, if your lease or rental agreement prohibits you from doing so, for paying the landlord to do it. But if you had nothing to do with the repair problem and it's not a cosmetic issue, chances go way up that your landlord is responsible, for one of the following reasons:

- A state or local building code requires that the landlord keep the damaged item (for example, a kitchen sink) in good repair.
- A lease or rental agreement provision or advertisement describes or lists particular items, such as hot tubs, trash compactors, and air conditioners. By implication, this makes the landlord responsible for maintaining or repairing them.
- The landlord made explicit promises when showing you the unit—for example, regarding the security or air-conditioning system.

Common Misconceptions About Routine Maintenance

Many tenants (and landlords) mistakenly think that every time a rental unit turns over, or a certain number of years have passed, the landlord must paint or clean drapes and carpets, or do some other kind of refurbishing. Unfortunately for tenants, the law almost never mandates cosmetic changes—even badly needed ones. Here are some common misconceptions:

Paint. California landlords are not required to repaint at specified times. Unless the paint creates a habitability problem—for example, it's so thick around a window that the window can't be opened, or flaking lead-based paint poses obvious health risks—the landlord can just let it go. (Lead-based paint creates so many potential problems that we discuss it separately in Chapter 10.)

Drapes and carpets. So long as drapes and carpets are not so damp or full of mildew as to amount to a health hazard, and so long as carpets don't have dangerous holes that could cause someone to trip and fall, your landlord isn't legally required to replace them.

Windows. You're responsible for fixing (or paying to fix) a broken window that you or your guest intentionally or carelessly broke. If a burglar, vandal, or neighborhood child breaks a window, however, the landlord is usually legally responsible for the repair. Broken windows can sometimes be a habitability problem; see Chapter 6.

Rekeying. Unfortunately, landlords are not legally required to change the locks for new tenants. However, if you tell a landlord in writing that you are worried about renting a unit secured by locks for which previous tenants (and perhaps their friends) have keys, most landlords rekey the locks. (If the landlord knows of your concern but does not respond, and you are attacked or your place is burglarized by someone using an old key, the chances of the landlord being held liable in a lawsuit go way up. (See Chapter 13.) California landlords must, however, at least provide door and window locks. (CC § 1941.1). Chapter 11 gives you the details.

- The landlord has assumed the obligation to maintain a particular feature, such as a whirlpool bathtub, because the landlord has fixed or maintained it in the past.

Each of these reasons is discussed below. If you're not sure whether a minor repair or maintenance problem is the landlord's responsibility, scan the discussion to find out.

Building Codes

California state law (and some city ordinances) covers structural requirements, such as roofs, flooring, windows, and essential services such as hot water and heat. If your repair problem is also a violation of the building code, you may be facing a habitability problem, as discussed in Chapter 6. But building codes often cover other, less essential details as well. For example, state code requires a minimum number of electrical outlets per room. When a room has too few outlets, it's inconvenient, but probably not unsafe or unhealthy. Likewise, the fact that you may have a faucet that drips probably does not render the dwelling unfit, but the landlord is still legally required to fix the problem.

Promises in the Lease or Rental Agreement

When it comes to legal responsibility for repairs, your own lease or rental agreement is often just as important (or more so) than building codes or state laws. If items such as drapes, washing machines, swimming pools, saunas, parking places, intercoms, or dishwashers come with the rental, then your landlord must continue to provide these amenities and maintain them in good working order. The only exception would be if you agreed in writing to take care of these items when you moved in.

Promises in Ads

If an advertisement for your unit described or listed a feature, such as a cable TV hookup, that significantly affected your decision to move into the

particular rental unit, you have the right to hold the landlord to these promises. Even if your written rental agreement says nothing about appliances, if the landlord's ad listed a dishwasher, clothes washer and dryer, garbage disposal, microwave oven, security gates, and Jacuzzi, you have a right to expect that all of them will be repaired by the landlord if they break through no fault of yours.

> **EXAMPLE:** Tina sees Joel's ad for an apartment, which says "heated swimming pool." After Tina moves in, Joel stops heating the pool regularly because his utility costs have risen. Joel has violated his promise to keep the pool heated.

The promise doesn't have to be in words.

> **EXAMPLE:** Tom's real estate agent showed him a glossy color photo of an available apartment, which featured a smiling resident using an intercom to welcome a guest. The apartment Tom rented did not have a working intercom, and he complained to the management, arguing that the advertisement implied that all units were so equipped. The landlord realized that he would have to fix the intercom.

Promises Made Before You Rented the Unit

It's a rare landlord or manager who refrains from even the slightest bit of puffing when showing a rental to a prospective tenant. You're quite likely to hear rosy plans for amenities or services that haven't yet materialized ("We plan to redo this kitchen—you'll love the snappy way that trash compactor will work!"). Whenever you hear promises like these, you would be wise to get them in writing, as part of (or attached to) your lease or rental agreement or, at the very least, in a prompt letter of understanding that cannot be repudiated later.

If this advice is coming to you now a bit late, and you don't in fact have anything in writing, don't give up hope. The oral promise is valid and enforceable—it's just a little harder to prove that it was made. If the promised trash compactor never appears, it's your word against the landlord's unless you have witnesses to the conversation. You'll be in a stronger position, proof-wise, if the promised feature is present in your unit but just doesn't work or breaks down after you move in, as explained just below.

> **EXAMPLE:** When Joel's rental agent shows Tom around the building, she goes out of her way to show off the laundry room, saying, "Here's the laundry room—we have two machines now, but will be adding two more soon." Tom rents the apartment. Two months go by and Joel still hasn't added the new machines. Joel has violated his promise to equip the laundry room with four machines.

TIP

It is usually a good idea to have oral agreements and promises in writing. One way to do this is to write a simple confirmation letter or email. Something like: "Dear Mr. Lord, It was a pleasure talking with you on the telephone this afternoon. During that conversation you agreed to install a washer/dryer in the laundry room before the end of next month. I appreciate your attention to this matter."

Implied Promises

Suppose your rental agreement doesn't mention a garbage disposal, and neither does any ad you saw before moving in. And, in fairness, you can't remember your landlord ever pointing it out when showing you the unit. But there is a garbage disposal, and it was working when you moved in. Now the garbage disposal is broken and, despite repeated requests, your landlord hasn't fixed it. Do you have a legal leg to stand on in demanding that your landlord make this minor repair? Yes. Many courts will hold a landlord legally responsible for maintaining all significant aspects of your rental unit. A garbage disposal is an "electrical fixture" that probably falls under the Civil Code Section 1941.1(a)(5).

If you rent a unit that *already has* certain features —light fixtures that work, doors that open and

close smoothly, faucets that don't leak, tile that doesn't fall off the wall—many judges reason that the landlord has made an implied contract to keep them in workable order throughout your tenancy.

Another factor that is evidence of an implied contract is the landlord's past conduct. A landlord who has consistently fixed or maintained a particular feature of your rental has made an implied obligation to continue doing so.

> **EXAMPLE:** Tina's apartment has a built-in dishwasher. When she rented the apartment, neither the lease nor the landlord said anything about the dishwasher or who was responsible for repairing it. The dishwasher has broken down a few times and whenever Tina asked Joel to fix it, he did. By doing so, Joel has established a practice that he—not the tenant—is responsible for repairing the dishwasher.

TIP

Check your lease. Landlords who want to avoid responsibility for appliance repairs often insert clauses in their leases or rental agreements stating that the appliances are not maintained by the landlord.

TIP

Using the Landlord-Tenant Checklist at the start of your tenancy will give you a record of appliances and features—and their condition. If something needs repairs, you'll be able to use the Checklist as proof of its original condition. (See Chapter 1 for instructions on using the checklist.)

Agreeing to Do Maintenance

Leases and rental agreements usually include a general statement that you are responsible for keeping your rental unit clean, safe, and in good condition, and for reimbursing your landlord for the cost of repairing damage you cause, as explained at length in Chapter 6. Your lease or rental agreement will probably also say that you can't make alterations or repairs, such as painting the walls, installing bookcases, or fixing electrical problems, without your landlord's permission (see Chapter 8).

Landlords who are tired of maintenance and repair jobs may use the lease, rental agreement, or separate contract to give these responsibilities to a tenant. Especially if you rent a single-family home or duplex, you may be asked to agree to mow the lawn, trim the bushes, and do minor plumbing jobs and painting.

Commonly, a landlord proposes a rent reduction in exchange for some work. Or the landlord may offer other perks (a parking space, for example), or will offer an amenity if the tenant will perform the maintenance—for example, a hot tub in exchange for your promise to clean it.

Although usually legal, these arrangements often lead to dissatisfaction—typically, the landlord feels that the tenant has neglected certain tasks, or the tenant feels that there is too much work. If the dispute boils over, the landlord tries to evict the tenant.

When you take on repair duties, here's how to protect yourself and avoid disputes:

- **Sign a separate agreement from your rental agreement or lease.** This is especially important if you plan to do considerable work for your landlord on a continuing basis, such as keeping hallways, elevators, or a laundry room clean, or maintaining the landscaping. Tenants who are also building managers are in this position. Ask your landlord to pay you for your work, rather than give you a rent reduction. That way, if the landlord claims that the job is not done right, the worst that can happen is that you may be fired but your tenancy should not be affected. But if your maintenance duties are tied to a rent reduction and things go wrong, you and the landlord will have to amend the lease or rental agreement in order to reestablish the original rent. And if the maintenance jobs are spelled out in a lease

clause, the landlord also has the option of terminating the lease on the grounds that your poor performance constitutes a breach of the lease. Be forewarned, however, that many landlords will not want to enter into an employer-employee relationship with you, because becoming an employer has its own set of complications.

- **Clearly write out your responsibilities and the landlord's expectations.** List your tasks and the frequency with which your landlord expects them to be done. Weekly tasks might include, for example, cleaning the laundry room, sweeping and wet mopping the lobby, and mowing the grass between April 1 and November 1.
- **Make sure the agreement is fair.** Ideally, your landlord will pay you a fair hourly rate. If your only choice is a rent reduction, make sure the trade-off is equitable. If you're getting only a $100 rent reduction for work that would cost the landlord $400 if done by a cleaning service, you're being ripped off.
- **Discuss problems with the landlord and try to work out a mutually satisfactory agreement.** If the landlord has complained about your work, maybe it's because the owner underestimated what's involved in cleaning the hallways and grounds. Your landlord may be willing to pay you more for better results or shorten your list of jobs. If not, cancel the arrangement.

Watch Out for Illegal Retaliation

Landlords who delegate some tasks are not relieved of all repair and maintenance responsibilities. For example, if you and your landlord agree that you will do gardening work in exchange for a rent reduction, and the landlord feels that you are not doing a proper job, the landlord cannot respond by shutting off your water.

CAUTION

Don't perform repairs involving hazardous materials. Any repair involving old paint or insulation (opening up a ceiling or wall cavity, for example) may expose you or others to dangerous levels of toxic materials. For example, sanding a surface for a seemingly innocuous paint job may actually create lead-based paint dust; the quick installation of a smoke alarm could involve disturbing an asbestos-filled ceiling. (See Chapter 10 for more information on environmental hazards.)

Getting the Landlord to Make Minor Repairs

By now you should have a pretty good idea as to whether your landlord is legally responsible for fixing the particular minor problem that is bedeviling you. Your next job is to get the landlord to do it. First, try to get the landlord to cooperate. If you can't, it may be time to take a more demanding approach.

Appealing to Your Landlord

Chances are you have already asked your landlord or manager to make repairs, only to be put off, ignored, or even told to forget it. Your next step is to write a formal demand letter—or, if you have already done it, a second one.

Before you pick up your pen or turn on your computer, take a minute to think about what words will most likely get action. Begin by remembering your landlord's overriding business concerns: to make money, avoid hassles with tenants, and stay out of legal hot water. A request that zeroes in on these issues will likely get the job done.

How to Write a Persuasive Repair Request

Whether this is your first or second formal demand letter, frame your repair request along one or more of the following lines, if possible:

- **It's a small problem now, but has the potential to be a very big deal.** A bathtub faucet that

drips badly may be simply annoying now, but devastating later if the washer gives out while you're not home, flooding the tub and ruining the floor and downstairs neighbor's ceiling. When you ask that the faucet be repaired, point out the risk of letting things go.

- **There is a potential for injury.** Landlords hate to be sued. If a potential injury-causing problem is brought to their attention, it's likely that their fear of lawsuits will overcome their lethargy, and you'll finally get results. Say, for instance, you have asked your landlord to repair the electrical outlet in your kitchen so that you can use your toaster. If you've received no response, try again with a different pitch: Point out that, on occasion, you have observed sparks flying from the wall, and a short in the wiring could cause an injury or fire.
- **There is a security problem that imperils your safety.** Landlords are increasingly aware that they can also be sued for criminal assaults against tenants if the premises aren't reasonably secure. (Chapter 11 discusses this topic in detail.) If you can figure out a way to emphasize the security risks of not fixing a problem—for example, a burned-out lightbulb in the garage or a door that doesn't always latch properly—you may motivate the landlord to act promptly.
- **The problem affects other tenants.** If you can point to a disaster-waiting-to-happen that affects more than one tenant, you will greatly increase your chances of some action. For example, accumulated oil puddles in the garage threaten the safety of all tenants and guests, not just you. Faced with the possibility of a small army of potential plaintiffs, each accompanied by an eager attorney, even the most slothful landlord may spring into action.
- **You're willing to try to fix it, but may make the problem worse.** Finally, you might try offering to fix the problem yourself in a way that is likely to elicit a quick "No thanks, I'll call my contractor right away!" This is a bit risky, since your bluff might be called, but even the most dense landlord will think twice when you offer to make an electrical repair with a chisel and masking tape.

See the sample letter below for more ideas on writing a persuasive repair request.

Sample Letter Asking for Minor Repairs

90 Willow Run, Apartment 3A
Morgantown, California 00000

February 28, 20xx

Mr. Lee Sloan
37 Main Street, Suite 100
Morgantown, California 00000

Dear Mr. Sloan:

I would appreciate it if you could schedule an appointment with me to look at three problems in my apartment that have come up recently.

First, the kitchen sink faucet is dripping, and it's getting worse. I'm concerned that a plate or dish towel might stop up the drain, leading to an overflow. At any rate, the water bill is yours, and I'm sure that you don't want to pay for wasted water.

I've also been having trouble opening the sliding doors on the bedroom closet. The track appears to be coming away from the wall, and the doors wobble and look like they might fall into the room when I open and close the closet.

Finally, it would really be great if you would give some thought to repainting the interior hallways. They looked clean when I moved in a year ago, but now are pretty grimy. I've spoken with the tenants in four of the other six units and they, too, would appreciate a return to your standards of old.

Thanks very much for thinking about my requests. I hope to hear from you soon.

Yours truly,
Chris Jensen
Chris Jensen

A written demand for repair or maintenance lets your landlord know that you are serious about the issue and are not content to just let it go. In addition, if your dispute ends up in small claims court, the demand letter can usually be introduced as evidence. Like this sample letter, your demand letter should:

- be neatly typed and use businesslike language.
- concisely and accurately state the important facts (this is important in case your letter ends up before a judge, who will need to be educated about the situation).
- be polite and nonpersonal. Obviously, a personal attack on your landlord may trigger an equally emotional response. Because you are appealing to the landlord's business interests, you want to encourage the landlord to evaluate the issue soberly, not out of anger.
- state exactly what you want—a new paint job, for example.

Always keep a copy of the letter or email for your files, and hand-deliver the letter or send it "return receipt requested."

Your Options If the Landlord Refuses to Make a Minor Repair

If your letter has not convinced your landlord to fix this minor issue and you do not believe that further coaxing will work, it's time to consider other options. They are:

- seek mediation or arbitration for "reduction in services"
- report code violations to a building inspector
- make the repairs yourself—or using a qualified person
- repair it yourself and deduct the cost of the repair from rent, or
- sue in small claims court.

Few, if any, minor repair problems warrant rent withholding because your tenancy is at risk when habitability issues are not substantial. In weighing these options, consider the nature of the repair (not all repairs warrant calling the building inspector or repairing and deducting), the cost of fixing it yourself and the chances of you getting reimbursed, and the hassle to you. Some may feel that the easiest way to deal with it is to fix the problem themselves and absorb the cost. Others may feel that it "sets a bad precedent" to pay for what the landlord should be responsible for.

As we've explained previously, it is unlawful for a landlord to retaliate (get back at you) for exercising your lawful rights. (CC § 1942.5.) However, be sure you are on solid ground before asserting your rights. For instance, does the repair address a habitability concern described in Civil Code Section 1941.1 or Health and Safety Code Section 17920.3? Are you charging a fair amount for the repair, and did you give your landlord reasonable notice?

Propose Mediation or File a Petition for Arbitration for Reduction in Services

Many community organizations and even some courts offer mediation services. These services try to get parties together to work on a mutually agreeable solution to a problem, and most of these services have experience with landlord/tenant issues. Participation in mediation is totally voluntary, however, and if your landlord does not want to participate, the service will be of little use.

As stated in the previous chapter, many jurisdictions with rent control allow tenants to petition for a reduction in rent due to a reduction in the services provided. If you live in such a city with rent control, you should contact your rent board to see how they can help.

Using either of these remedies involves little or no risk.

Reporting Code Violations

If appealing to your landlord's business sensibilities doesn't work, other strategies are available to pry minor repairs out of your landlord.

If the problem you want fixed constitutes a code violation, such as inadequate electrical outlets or low water pressure, you should find an ally in the building or housing agency in charge of enforcing the code. (Chapter 6 explains how to find and what to expect from these local agencies.) Whether you'll get any action out of the agency will depend on the seriousness of the violation, the workload of the agency, and its ability to enforce its compliance orders. Because by definition your problem is minor, don't expect lots of help if code enforcement officials are already overworked.

Making Repairs Yourself—Or Using a Qualified Repairperson

If your landlord has refused to make a requested repair, and it's the type of repair you think he should make, you may decide to go ahead and make the repair yourself (or use a qualified person). After the repair, you have three options:

1. If the repair is for a condition listed in Civil Code Section 1941.1, you may choose to deduct the cost from your rent.
2. You may also decide to seek reimbursement in small claims court—but before you do this, you must write a letter to your landlord, requesting the reimbursement.
3. You may want to just avoid the hassle and absorb the cost yourself.

The first step is to determine whether the landlord is responsible for the repair or you are. In either event, you will want to notify the landlord of the problem and that you intend to fix the problem (or have a qualified person fix it). If you decide to do it yourself, be sure it's something you are capable of doing competently. If not, find a qualified person to do the job.

Be careful if the landlord objects to your taking care of the repair yourself or does not give you permission to do it. Depending on the nature of the repair, you could be violating your lease agreement if it has a provision that says that the tenant cannot make "repairs, alterations or improvements" to the premises (sometimes these clauses add, "without the landlord's consent"). (Improvements and alterations are covered in the following chapter.) Note, however, if the repair is of a condition listed in Civil Code Section 1941.1, you have a legal right to repair the problem and deduct the cost from your rent, regardless of the presence of such a lease clause (discussed below).

If you have gone ahead with the repair, consider the choices outlined above.

Repair Yourself, Deduct the Cost of Repair from Your Rent

One option is to deduct the cost of the repair from your rent. Remember, under Civil Code Section 1942, you can only deduct up to a month's rent, two times in any 12-month period. Details of how to take advantage of this are in Chapter 6, "Major Repairs & Maintenance." Civil Code Section 1941.1 lists the types of repairs that are allowed before rent can be deducted.

If you repair and deduct, the landlord may give you a three-day notice to pay rent or quit. If the repair was a type described in Civil Code Section 1941.1, you should be able to successfully fight an eviction. You might also consider paying the rent within the three days to avoid eviction, then sue in small claims court.

Sue in Small Claims Court

Another option is to to sue in small claims court. But before you do, write a second demand letter. Like the first letter (see the sample above), your second letter should describe the problems and alert the landlord to the negative consequences (to the landlord, not just to you) that may follow if repairs aren't made. In addition, state that you intend to sue if you don't get results. This may get the landlord's attention and save you a trip to the courthouse.

EXAMPLE: Chris Jensen wrote to her landlord on February 28, requesting repairs as shown in the sample letter above. She got no reply. Ten days later,

she sent a second letter that summarized the first and concluded with this paragraph:

"If you are unable to attend to these repairs, I'll need to call in a handyman to repair the faucet and doors, and I will seek reimbursement from you in small claims court if necessary. As for the deterioration of the paint, I believe I am entitled to a reduction in rent, which I will also seek in small claims court. Of course, I sincerely hope that this will not be necessary."

If the second letter doesn't produce results, it's time to proceed with the repair. Most small claims courts prefer (or require) that before filing, the person making the claim first notify the defendant in writing of the exact amount owed and for what, and give them a reasonable time to respond. If you have not yet done this, you will need to send one more letter informing the landlord of the amount you are claiming and the reasons for your demand. If you get no results, then it's time to file the small claims court action. You won't need a lawyer (in fact, in California you can't bring a lawyer to small claims court). Just go to the court and ask for the forms you need to sue someone. To find your court, search online for your county's small claims court. (You may find some of the forms you need online.) In small claims court, you can't get an order from the judge directing your landlord to paint, fix the dishwasher, or repair the intercom. You may, however, be compensated in dollars for living in a rental unit with repair problems. Here's how it works.

When you file your small claims court suit, you'll ask for an amount that reflects the difference between your rent and the value of the unit with repair problems. For example, if you're living with a broken air conditioner, and know that apartments without air conditioners rent for $100 less per month, use that figure (multiplied by the number of months or parts thereof that the unit's been broken) as your measure of damages. In court, your argument will be that you are not getting the benefit of what you're paying rent for—for example, a functioning dishwasher, presentable paint, or a working air conditioner. If you paid for a repair, include that in the same lawsuit.

CAUTION

Don't stop paying rent. Although fairness dictates that if your rental unit is full of repair problems you ought to pay less rent, it's a mistake to pay your landlord less than the full monthly rent. Rent withholding, as discussed in Chapter 6, is legally appropriate only for major repairs. If you withhold even a portion of the rent because of a minor repair problem, you risk eviction for nonpayment of rent.

Your goal in small claims court is to convince the judge that these problems really make your rental unit worth less money. Use common sense—don't go running to court for small things. A small claims court judge is not going to adjust your rent because a little grout is missing from your bathroom tile. But if your dishwasher is broken, three faucets leak noisily, and the bathroom door won't close, your chances of winning go way up. You'll need to show the judge that:

- there are several minor defects, not just an isolated one, and
- you've given the landlord plenty of time and notice to fix the problems.

Be sure to bring evidence. Winning in small claims court depends more on what you drag into court with you than on what you say. Examples of key evidence include:

- copies of letters you've written asking for repairs
- your written notes on your landlord's response to your repair requests, including the number of times they were ignored or promised repairs didn't materialize
- witnesses—a family member, for example, who can describe the inoperable air conditioner
- photographs—your pictures of the cracked, flaking plaster, for example
- a copy of the local building or housing code, if the problem is covered there
- your lease or rental agreement, if it lists any of the items that need repair
- your lease or rental agreement, if it prohibits you from making repairs yourself
- a copy of the Landlord-Tenant Checklist, which you should have completed when you

moved in and which is signed by you and the landlord, showing that the problem did not exist at the start of your tenancy, and
- ads, brochures, or "For Rent" signs describing features of your rental that are missing or malfunctioning.

EXAMPLE: Judy signed a one-year lease for a studio apartment at $750 a month. When she moved in, the place was in good shape. But six months into her tenancy, the condition of the apartment began to deteriorate. A water leak from the roof stained and buckled several areas of the hardwood floors; the kitchen cabinets, which were apparently badly made, warped, and would not shut; the dishwasher became so noisy the neighbor banged on the wall when it was in use; the soap dish fell off the bathroom wall; and the white entryway rug started to fall apart. Judy asked her landlord to attend to these problems and followed up with several written demand letters. Two months after her original request, Judy wrote a final demand letter.

When the landlord still did nothing, Judy filed suit in small claims court, asking the judge to award her damages (money) representing the difference between her rent and the value of the deteriorated apartment. After considering Judy's evidence, including copies of her demand letter, photographs of the defects, and the testimony of her neighbor, the judge agreed with Judy. The judge figured that the deteriorated apartment would have rented for $150 less a month, and ordered the landlord to pay Judy $450 to make up for the three months she had lived with the defects. Judy's landlord was quick to make repairs after learning this expensive lesson in court.

RESOURCE

***Everybody's Guide to Small Claims Court in California*, by Ralph Warner (Nolo),** has all the details you need to file a small claims court lawsuit. See www.nolo.com can for a sample chapter and table of contents for this book.

CHAPTER

8

Improvements, Alterations, & Satellite Dishes

Your lease or rental agreement probably includes a clause prohibiting you from making any alterations or improvements to your unit without the express, written consent of the landlord. (Often, your landlord will forbid you to undertake repairs, too. This issue is discussed in Chapter 1.) Landlords use these clauses—some of which contain a long list of prohibitions—so that tenants don't change the light fixtures, knock out a wall, install a built-in dishwasher, or even pound in a nail to hang a picture unless the landlord agrees first.

But what if you make an alteration or improvement without getting your landlord's permission—for example, you bolt a closet storage system to the wall? This could be a lease violation that could lead to an eviction. But even if you avoid that, when you leave you're likely to face the question of whether an improvement that is physically attached to the property is the property of the landlord or you. To help you avoid problems, this chapter explains:

- what types of improvements and alterations become the landlord's property
- what you can do, ahead of time, to avoid losing your property
- how to minimize your losses if your landlord insists that the improvement remain on the property, and
- special rules for cable TV access and satellite dishes.

TIP

Disabled tenants have rights under federal and state laws to make reasonable modifications to their rental unit. For details on this subject, check out the "Disabled Renters' Housing Rights" article on the Nolo website at www.nolo.com/legal-encyclopedia/disabled-renters-housing-rights-30121.html.

Improvements That May Become Part of the Property

It's a natural desire to "feather your nest," and tenants do it all the time, by changing plumbing and light fixtures, attaching storage systems, and installing appliances. At move-out, tenants often take these pricey items with them. Discovering altered countertops, holes from hollow-wall bolts, and re-installed fixtures, the landlord demands that the upgrade be returned; and if not returned, that the tenant pay the landlord for the value of the missing upgrade, installed. When does the tenant have to pay up (or, more likely, when can the landlord deduct that amount from the security deposit before returning it)?

The answer takes us into the age-old law of "fixtures," developed centuries ago in England when tenants were farmers, not city-dwellers. Once the farmer planted a seed, sunk a fence post, or built a shed, these items became part of the landlord's property, and were called fixtures. They could not be taken away at the end of the tenancy—and practically speaking, most tenants wouldn't want to do so anyway (who is going to transplant a field of oats?). The rule was simple: Anything "affixed" to the land belonged to the landlord; items not affixed (like a shovel) were the tenant's personal property and could be taken away at the end of the tenancy.

These days, despite the fact that most tenants can quite feasibly remove items they've attached to the property, and have good reason for doing so, some judges stubbornly adhere to the old rule: If the item was attached in any way to the property (screwed, bolted, or otherwise), it belongs to the landlord. But some will follow modern case law, and analyze the question on a case-by-case basis, asking what the parties intended, and whether a particular result would be unjust to either side. Note that the law still says that items affixed to the property belong to

the landlord, absent an agreement to the contrary (CC § 600), but the question, now nuanced, is: What does it *mean* to "affix" something to the property? Here are some of the considerations a thoughtful judge will bring to bear:

The foremost question is: What did the tenant (and the landlord, if the landlord knew about the item) intend would happen at the end of the tenancy? (*Banks v. Cintworth*, 201 Cal.App.2d 789 (1962).) If it's clear that the item was slated for removal, the tenant gets to take it; but if circumstances show that it's unlikely that the tenant planned to detach it, the item is more likely to be a fixture and will stay put. For example,

- **What does the rental agreement say?** A lease that forbids alterations or improvements without the landlord's consent puts the tenant who ignores this clause at an initial disadvantage, at least. This disadvantage can be mitigated by showing, for example, that upon learning of the improvement, the landlord applauded it, which essentially waives the prohibition in the lease.
- **How disruptive, time-consuming, and expensive was the installation?** The more disruptive, expensive, and difficult the installation, the more likely the item will be deemed a fixture. That's because it's unlikely the tenant intended to undo his work upon leaving (even if he could). For instance, unscrewing a kitchen faucet and installing a new one is usually quick and easy; so too is replacing the original fixture—so the fancy new one is probably the personal property of the tenant. Or, placing a few hollow-wall anchors to secure a bookshelf or a shelving system is minimal work and the holes can be easily patched. But reconstructing a kitchen counter that the tenant rebuilt to accommodate a dishwasher is a major undertaking that most tenants wouldn't do when they leave. The dishwasher that goes into the new space is likely to be considered a fixture. (*Pajaro Valley Bank v. County of Santa Cruz,* 207 Cal. App.2d 621 (1962).)

Fortunately for tenants, the law falls on your side unless there is a clear intention that the property is a fixture. Courts should resolve doubts in favor of the tenant (that is, that the tenant did not intend to incorporate the property to the premises). To find otherwise would result in an unfair forfeiture of the tenant's property and lead to the unjust enrichment of the landlord. (*Pomeroy v. Ball,* 118 Cal. 635 (1887).)

Nevertheless, even when you have a strong case for labeling the item your personal property, there's no guarantee that a court will rule in your favor. As noted, some judges will base their determination solely on whether the property is physically attached to the realty by a screw, bolt, or otherwise. That's why it's best to clarify beforehand, as explained in the following section.

CAUTION

You may have to pay for damage resulting from the removal of your personal property. Suppose you prevail on the closet storage system you installed with hollow wall anchors, and the landlord can neither demand that you leave it in place, nor charge you for it when you remove it. But removing it will leave holes. The cost to repair the wall can fairly be taken out of your security deposit.

Improvements That Plug or Screw In

The act of plugging in an appliance doesn't make the appliance a part of the premises. The same is true for simple wiring or pipe attachments to join an appliance to an electrical or water source. For example, a refrigerator or free-standing stove that the tenant brought in remains the property of the tenant. Similarly, portable dishwashers that connect to the kitchen faucet by means of a coupling may be removed.

Improving Your Rental Without Enriching Your Landlord

Your best protection against losing an item you paid for is not to attach it to a wall in your unit. Fortunately, hundreds of items are on the market—bookcases, lighting systems, closet organizers, and even dishwashers—that you can take with you when you leave. To get some good ideas, visit a large hardware store, a home improvement center, or a business devoted to closet organization systems.

If you are determined to attach something to the wall or floor, talk to the landlord first. Try to get the landlord to agree to pay for the improvement or to let you remove it when you leave.

Decide beforehand which option you prefer. For example, because a custom-made track lighting system won't do you any good if you take it with you, find out whether the landlord will pay for it in the first place. On the other hand, if you want to take the fixture with you, impress upon the landlord your intent to carefully restore the property to its original condition. Keep in mind that if your restoration attempts are less than acceptable, the landlord will be justified in deducting from your security deposit the amount of money necessary to do the job right. And if the deposit is insufficient, the landlord can sue you in small claims court for the excess.

Approach your landlord as one business person dealing with another. If the improvement will remain and you seek reimbursement, point out that it will make the property more attractive. It might even justify a higher rent for the next tenant and thus pay for itself over the long run. Your landlord might agree to reduce your rent a little each month or simply reimburse you all at once.

If you and the landlord reach an understanding, put it in writing, using our Agreement Regarding Tenant Alterations to Rental Unit (see the sample, below). Carefully describe the project and materials, and state whether the landlord will reimburse you or allow you to take the improvement with you.

FORM

You'll find a copy of the Agreement Regarding Tenant Alterations to Rental Unit in Appendix C, and the Nolo website includes a downloadable copy of this form (see Appendix B for the link to the forms in this book) which you can edit to fit your particular situation.

TIP

Save all receipts for materials and labor. Whether you will be reimbursed or will take the fixture with you when you leave, it is important to keep a good record of the amount of money you spent on the project. That way, there can be no dispute as to what you're owed if you are to be reimbursed. If the landlord changes his mind and doesn't let you remove the improvement at the end of your tenancy, you'll have receipts to back up your small claims lawsuit for the value of the addition.

Cable TV Access

If you're lucky, cable TV may already be in the rental property through coaxial cables that are strung along telephone poles or underground and into the building, with a single plug on the exterior of the structure and with branches to individual units. To sign up for service, you need only call the cable provider to activate the existing cable line to your unit. But what happens if the building does not have cable access now? And if the landlord has a contract with one provider, can you insist that he open his lines to another, competing provider?

Providing cable access is a bit more complicated than the situation you face when you ask to install a bookcase or paint a room. The federal government has something to say under the Federal Telecommunications Act of 1996 (47 U.S.C. §§ 151 and following). In this Act, Congress decreed that all Americans should have as much access as possible to information that comes through a cable or over the air on wireless transmissions. The Act makes it very difficult for state and local governments, zoning commissions, homeowners' associations, and landlords to impose restrictions that hamper a person's ability to take advantage of these new types of communications.

Agreement Regarding Tenant Alterations to Rental Unit

Lenny Lander (Landlord)
and Tom Tenant (Tenant)
agree as follows:

1. Tenant may make the following alterations to the rental unit at: 54 Alta Way, Anytown, CA 94567
2. Tenant will accomplish the work described in Paragraph 1 by using the following materials and procedures: Lumen track lighting system, hard wired.
3. Tenant will do only the work outlined in Paragraph 1 using only the materials and procedures outlined in Paragraph 2.
4. The alterations carried out by Tenant (check either a or b):
   - ☑ a. will become Landlord's property and are not to be removed by Tenant during or at the end of the tenancy
   - ☐ b. will be considered Tenant's personal property, and as such may be removed by Tenant at any time up to the end of the tenancy. Tenant promises to return the premises to their original condition upon removing the improvement.
5. Landlord will reimburse Tenant only for the costs checked below:
   - ☑ the cost of materials listed in Paragraph 2
   - ☐ labor costs at the rate of $ _____ per hour for work done in a workmanlike manner acceptable to Landlord up to _____ hours.
6. After receiving appropriate documentation of the cost of materials and labor, Landlord shall make any payment called for under Paragraph 5 by:
   - ☑ lump sum payment, within 15 days of receiving documentation of costs, or
   - ☐ by reducing Tenant's rent by $ _____ per month for the number of months necessary to cover the total amounts under the terms of this agreement.
7. If under Paragraph 4 of this contract the alterations are Tenant's personal property, Tenant must return the premises to their original condition upon removing the alterations. If Tenant fails to do this, Landlord will deduct the cost to restore the premises to their original condition from Tenant's security deposit. If the security deposit is insufficient to cover the costs of restoration, Landlord may take legal action, if necessary, to collect the balance.
8. If Tenant fails to remove an improvement that is his or her personal property on or before the end of the tenancy, it will be considered the property of Landlord, who may choose to keep the improvement (with no financial liability to Tenant), or remove it and charge Tenant for the costs of removal and restoration. Landlord may deduct any costs of removal and restoration from Tenant's security deposit. If the security deposit is insufficient to cover the costs of removal and restoration, Landlord may take legal action, if necessary, to collect the balance.
9. If Tenant removes an item that is Landlord's property, Tenant will owe Landlord the fair market value of the item removed plus any costs incurred by Landlord to restore the premises to their original condition.
10. If Landlord and Tenant are involved in any legal proceeding arising out of this agreement, the prevailing party shall recover reasonable attorney fees, court costs, and any costs reasonably necessary to collect a judgment.

Lenny Lander — Signature of Landlord
January 4, 20xx — Date

Tom Tenant — Signature of Tenant
January 4, 20xx — Date

Previously Unwired Buildings

Fortunately, most residential rental properties are already wired for cable. In competitive urban markets especially, landlords have figured out that they'll have a hard time attracting tenants if they do not give them the option of paying for cable. However, in the event that the property does not have cable, your landlord is entitled to continue to resist modernity and say "No" to tenants who ask for access. If this is the response you get from your landlord, you may want to consider mounting a satellite dish. (See "Satellite Dishes and Other Antennas," below, for rules governing these devices.)

Buildings With Existing Contracts

Many multifamily buildings are already wired for cable. In the past, landlords have been able to secure attractive deals with the service providers, passing savings on to tenants. Many landlords signed "exclusive" contracts, whereby they promise the cable provider that they will not allow other providers into the building.

In October 2007, the Federal Communications Commission (FCC) ruled that not only are exclusive contracts unenforceable, but exclusive clauses in existing contracts will not be enforced. This means that any exclusive clauses the landlord may now have in its contracts are unenforceable, and the landlord may not enter into any new ones. Landlords do *not*, however, have to let any cable company who asks into their building, nor do they have to allow access to a particular company when asked by tenants. If you would like cable service other than the one currently offered on the property, you'll need to convince your landlord that inviting that company into its property makes good marketing sense. For more information, see the FCC's "Small Entity Compliance Guide" (type this title into the search box at www.fcc.gov).

Satellite Dishes and Other Antennas

Wireless communications have the potential to reach more people with less hardware than any cable system. But there is one, essential piece of equipment: a satellite dish with wires connecting it to the television set or computer.

You may be familiar with the car-sized dishes often seen in backyards or on roofs of houses—the pink flamingo of the modern age. Smaller and cheaper dishes, two feet or less in diameter, are now available. Wires from the dishes can easily be run under a door or through an open window to a TV or computer. Tenants have attached these dishes to interior walls, roofs, windowsills, balconies, and railings. Landlords object, citing their unsightly looks and the potential for liability if one falls and injures someone.

Fortunately, the Federal Communications Commission has provided considerable guidance on residential use of satellite dishes and antennas (Over-the-Air Reception Devices Rule, 47 C.F.R. § 1.4000, further explained in the FCC's Fact Sheet, "Over-the-Air Reception Devices Rule"). Basically, the FCC prohibits landlords from imposing restrictions that unreasonably impair your ability to install, maintain, or use a dish or other antenna that meets the criteria described below. Here's a brief overview of the FCC rule.

RESOURCE

For complete details on the FCC's rule on satellite dishes and other antennas, see www.fcc.gov/guides/installing-consumer-owned-antennas-and-satellite-dishes. The FCC's rule was upheld in *Building Owners and Managers Assn. v. FCC,* 254 F.3d 89 (D.C. Cir.) (2001).

Devices Covered by the FCC Rule

The FCC's rule applies to video antennas, including direct-to-home satellite dishes that are less than one meter (39.37 inches) in diameter, TV antennas, and wireless cable antennas. These pieces of equipment receive video programming signals from direct broadcast satellites, wireless cable providers, and television broadcast stations. Antennas up to 18 inches in diameter that transmit as well as receive fixed wireless telecom signals (not just video) are also included.

There are, however, some exceptions. Antennas used for AM/FM radio, amateur ("ham"), and Citizen's Band ("CB") radio or Digital Audio Radio Services ("DARS") are excluded from the FCC's rule. Landlords may restrict the installation of these types of antennas in the same way that they can restrict any modification or alteration of rented space, as explained in the first section of this chapter.

Permissible Installation of Satellite Dishes and Antennas

You may place dishes or other antennas only in your own, exclusive rented space, such as inside the rental unit or on a balcony, terrace, deck, or patio. The device must be wholly within the rented space (if it overhangs the balcony, the landlord may prohibit that placement). Also, landlords may prohibit you from drilling through exterior walls, even if that wall is also part of your rented space.

The FCC rule specifies that you cannot place a reception device in common areas, such as roofs, hallways, walkways, or the exterior walls of the building. Exterior windows are no different from exterior walls—for this reason, placing a dish or antenna on a window by means of a series of suction cups is impermissible under the FCC rule (obviously, such an installation is also unsafe). Tenants who rent single-family homes, however, may install devices in the home itself or on patios, yards, gardens, or other similar areas.

Restrictions on Installation Techniques

Landlords are free to set restrictions on how the devices are installed, as long as the restrictions are not unreasonably expensive or are imposed for safety reasons or to preserve historic aspects of the structure. Landlords cannot insist that their maintenance personnel (or professional installers) do the work (but landlords may set reasonable guidelines as to how to install the devices, as explained below). Most importantly, if your landlord has not communicated an installation policy, you may go ahead and install the device without asking permission first (of course, do so in a safe manner). (*In re Frankfurt,* 16 FCC Rcd. 2875 (2001).)

Expense

Landlords may not impose a flat fee or charge you additional rent if you want to erect a dish or other antenna. On the other hand, the landlord may be able to insist on certain installation techniques that will add expense—as long as the cost isn't excessive and reception will not be impaired. Examples of acceptable expenses include:

- insisting that an antenna be painted green in order to blend into the landscaping, or
- requiring the use of a universal bracket that future tenants could use, saving wear and tear on the building.

TIP

Rules for mounting satellite dishes or other antennas shouldn't be more restrictive than those that apply to artwork, flags, clotheslines, or similar items. After all, attaching telecommunications items is no more intrusive or invasive than bolting a sundial to the porch, screwing a thermometer to the wall, or nailing a rain gauge to a railing. If your landlord's standards for telecommunications devices are much stricter than guidelines for other improvements or alterations, you may have a good argument that the landlord is violating the FCC rules. (See "How to Handle Disputes About the Use and Placement of Satellite Dishes and Other Antennas," below, for information on how to respond to unreasonable landlord rules.)

Safety Concerns

Landlords can insist that you place and install devices in a way that will minimize the chances of accidents and will not violate safety or fire codes. In fact, the FCC directs landlords to give tenants written notice of safety restrictions, so that tenants will know in advance how to comply. For example, it's not a good idea to place a satellite dish on a fire escape, near a power plant, or near a walkway where passers-by might accidentally hit their heads. Your landlord may also insist on proper installation techniques, such as those explained in the instructions that come with most devices.

Now, suppose that proper installation (attaching a dish to a wall) means that the landlord will have to eventually patch and paint a wall. Can the landlord use this as reason for preventing installation? No—unless there are legitimate reasons for prohibiting the installation, such as a safety concern. When you move out and remove the device, however, your landlord may charge you for the cost of repairing the attachment spot (such as replastering and repainting).

CAUTION

A savvy landlord will require tenants who install antennas or dishes to carry renters' insurance. If the device falls and injures someone, your policy will cover any claim. Whether requiring renters' insurance unreasonably increases the cost to you of receiving over-the-air signals has not been decided by the FCC or the courts.

Preserving the Building's Historical Integrity

Your landlord may argue that the historical integrity of the property will be compromised if an antenna or satellite dish is attached. This isn't an easy claim to make. A landlord can use this argument only if the property is included in (or eligible for) the National Register of Historic Places—the nation's official list of buildings, structures, objects, sites, and districts worthy of preservation for their significance in American history, architecture, archaeology, and culture. For more information on what's required to qualify for the Register and for a database of registered places, see www.cr.nps.gov/history/nr.

Placement and Orientation of Antennas and Reception Devices

Tenants have the right to place an antenna where they'll receive an "acceptable quality" signal. As long as the tenant's chosen spot is within the exclusive rented space, not on an exterior wall or in a common area as discussed above, the landlord may not set rules on placement—for example, the landlord cannot require that an antenna be placed only in the rear of the rental property if this results in the tenant's receiving a "substantially degraded" signal or no signal at all.

Reception devices that need to maintain line-of-sight contact with a transmitter or view a satellite may not work if they're stuck behind a wall or below the roofline. In particular, a dish must be on a south-facing wall, since satellites are in the southern hemisphere. Faced with a reception problem, you may want to move the device to another location or mount it on a pole, so that it clears the obstructing roof or wall. Tenants who have no other workable exclusive space may want to mount their devices on a mast, in hopes of clearing the obstacle. Depending on the situation, you may have the right to do so. Here are the rules for masts.

- **Single-family rentals.** Tenants may erect a mast that's 12 feet or less above the roofline without asking permission first—and the landlord must allow it if the mast is installed in a safe manner. If the mast is taller than 12 feet, the landlord may require the tenant to obtain permission before erecting it—but if the installation meets reasonable safety requirements, the landlord should allow its use.
- **Multifamily rentals.** Tenants may use a mast as long as it does not extend beyond their exclusive rented space. For example, in a two-story rental, a mast that is attached to the ground-floor patio and extends into the air space opposite your own second floor would be permissible. On the other hand, a mast attached to a top-story deck, which extends above the roofline or outward over the railing, would not be protected by the FCC's rule—a landlord could prohibit this

installation because it extends beyond your exclusive rented space.

Supplying a Central Antenna or Satellite Dish for All Tenants

Faced with the prospect of many dishes and or other antennas adorning an otherwise clean set of balconies, some landlords have installed a central dish or other antenna for use by all.

Landlords may install a central antenna and restrict the use of individual antennas by tenants only if the central device provides:

- **Equal access.** You must be able to get the same programming or fixed wireless service that you could receive with your own antenna.
- **Equal quality.** The signal quality to and from your home via the central antenna must be as good as or better than what you could get using your own device.
- **Equal value.** The costs of using the central device must be the same as or less than the cost of installing, maintaining, and using an individual antenna.
- **Equal readiness.** Landlords can't prohibit individual devices if installation of a central antenna will unreasonably delay your ability to receive programming or fixed wireless services—for example, when the central antenna won't be available for months.

If a landlord has installed a central antenna after tenants have installed their own, the landlord may require removal of the individual antennas, as long as the central device meets the above requirements. Your landlord will have to pay you for the removal of your device and compensate you for the value of the antenna.

How to Handle Disputes About the Use and Placement of Satellite Dishes and Other Antennas

In spite of the FCC's attempts to clarify tenants' rights to reception and landlords' rights to control what happens on their property, there are many possibilities for disagreements. For example, what exactly is "acceptable" reception? If the landlord requires antennas to be painted, at what point is the expense considered "unreasonable?"

Ideally, your landlord will avoid disputes in the first place, by setting reasonable policies. But, if all else fails, here are some tips to help you resolve the problem with a minimum of fuss and expense.

Discussion, Mediation, and Help from the FCC

First, approach the problem the way you would any dispute—talk it out and try to reach an acceptable conclusion. Follow our advice in Chapter 17 for settling disputes on your own—for example, through negotiation or mediation. You'll find the information on the FCC website very helpful (www.fcc.gov/consumers/guides/installing-consumer-owned-antennas-and-satellite-dishes). Once you find the document, go to "For More Information."). Your direct broadcast satellite company, multichannel distribution service, TV broadcast station, or fixed wireless company may also be able to suggest alternatives that are safe and acceptable to both you and your landlord.

Get the FCC Involved

If your own attempts don't resolve the problem, you can call the FCC and ask for oral guidance. You may also formally ask the FCC for a written opinion, called a Declaratory Ruling. For information on obtaining oral or written guidance from the FCC, follow the directions as shown on the FCC website at www.fcc.gov (see the link above). Fortunately for tenants, unless the landlord's objections concern safety or historic preservation, the landlord must allow the device to remain pending the FCC's ruling.

Go to Court

When all else fails, you can head for court. If the antenna or satellite dish hasn't been installed yet and you and the landlord are arguing about

the reasonableness of the landlord's policies or your plans, you can ask a court to rule on who's right (just as you would when seeking the FCC's opinion). You'll have to go to superior court for a resolution of your dispute, where you'll ask for an order called a "Declaratory Judgment." Similarly, if the antenna or dish *has* been installed and the landlord wants a judge to order it removed, the landlord will have to go to superior court and ask for such an order. Unfortunately, the simpler option of small claims court will not usually be available in these situations, because most small courts handle only disputes that can be settled or decided with money, not requests about whether it's acceptable to do (or not do) a particular task.

Needless to say, being in superior court means that the case will be drawn-out and expensive. You could handle it yourself, but be forewarned—you'll need to be adept at arguing about First Amendment law and Congressional intent, and must be willing to spend long hours preparing your case. In the end, you may decide that it would have been cheaper to follow the Giants on cable TV.

RESOURCE

If you head into superior court, consult *Win Your Lawsuit: Sue in California Superior Court Without a Lawyer,* by Judge Roderic Duncan (Nolo). This book will guide you through the process of filing and litigating a limited jurisdiction case (one that involves $25,000 or less).

CHAPTER 9

Injuries on the Premises

If you have been injured on your landlord's property, you may have a good legal claim against your landlord. That doesn't mean you'll have to file a lawsuit—most valid claims against landlords are settled without trial. It may well be to your advantage to negotiate with the landlord's insurance adjuster or lawyer yourself, rather than to immediately hire a lawyer, who will typically take one-third of your recovery. If the landlord or insurer proves unreasonable, you can always hire a lawyer.

This chapter explains how to evaluate whether your landlord is liable for your injury, and what to do to maximize your chances of a just settlement or lawsuit verdict. Skip this chapter if you haven't been injured or aren't interested in learning about the issue.

What to Do If You're Injured

What is the best course of action to take if you're injured? If your injury is significant and costly—it has resulted in lost work, doctors' bills, and physical or emotional discomfort—and you think the landlord is at fault, you'll want to consider legal action. But don't go rushing off to the nearest personal injury lawyer just yet. Especially if your injury isn't very severe, you may be better off—at least initially—handling the claim yourself.

But if your injury is severe, see a lawyer right away. Injuries in this category include:

- a long-term or permanently disabling injury, such as the loss of a limb
- an injury that results in medical costs and lost income over $10,000, or
- heavy-duty toxic exposure, such as lead or pesticide poisoning.

This book can't cover all the ins and outs of pursuing a personal injury claim. Here, however, is an outline of the basic steps you should follow.

Get Immediate Medical Attention

The success of an accident claim often depends on what you do in the first hours and days after your injury. Although you may be in pain, angry, or even depressed, attention to these details immediately following the incident will pay off later.

It is essential to get prompt medical attention for your injury, even if you consider it to be of marginal help to your physical recovery. No insurance company, judge, or jury will take your word alone for the extent of your injury, pain and suffering. It may seem obvious to you that a sprained ankle caused immobility, swelling and pain, and made you miss a week's work. Nonetheless, you'll need the confirmation of a physician, and the professional opinion that you didn't suffer a mere soft tissue bruise, when it comes to convincing a skeptical insurance adjuster or jury of your injury's impact.

Moreover, if you intend to hold the landlord financially responsible for your injuries, the law expects you to take whatever steps are possible to lessen the extent of your injuries and speed your recovery. Oddly, the reason has little to do with concern for your physical well-being; rather, the law expects you to take reasonable steps to lessen the accident's financial impact on the landlord. In short, you'll need the verification of a doctor that you were a conscientious patient who did not prolong or ignore your injuries.

> **EXAMPLE:** May-Ling, a new tenant, slipped on a puddle of oil-slicked rainwater that habitually accumulated at the base of the garage stairs. She fell and badly twisted her back. Thinking that time would heal her wounds, she did not seek medical attention, though she did stay home from work for a week.
>
> She then filed a claim with the landlord's insurance company, seeking compensation for her pain and suffering and lost wages. The insurance adjuster questioned the severity of her injury and suggested that, had she consulted a doctor, she might have recovered sooner with the aid of muscle-relaxing medication. Unable to verify the extent of her injury and having no way to effectively answer the claim that medical attention might have helped her, May-Ling settled her claim for a disappointing amount.

Write Everything Down

As soon as possible after the accident, jot down everything you can remember about how it happened. Include a complete list of everyone who was present and what they said. For example, suppose you tripped on a loose stair and the manager rushed over and blurted out, "I told Jim [the landlord] we should have replaced that last month!" Be sure to write this down and note the names of anyone who heard the manager say it.

Describe the precise nature of your injuries, including pain, anxiety, and loss of sleep. Make notes of every economic loss, such as lost wages, missed classes and events, and transportation and medical costs. If you have a conversation regarding the incident with anyone (the landlord, other tenants, an insurance adjuster, or medical personnel), make a written summary of the conversation.

CAUTION

Assume that anything you write down is going to be used as evidence in court. For this reason, be thoughtful before writing down what happened. Stick to the facts as you know them, write down what you saw, heard, or touched. You don't need to get into your thoughts or speculation about the events; they are not evidence and can be used in cross-examination at trial.

Preserve Evidence

Claims are often won by the production of a persuasive piece of physical evidence: the worn or broken stair that caused the fall, the unattached throw rug that slipped when stepped on, the electrical outlet faceplate that showed burn marks from a short. Remember that physical evidence that is not preserved within a short time can be lost, modified by time or weather, repaired, or destroyed. For example, the landlord, not wanting more accidents, may quickly replace a loose stair that caused you to fall, and throw the old one away.

If preservation of the evidence would involve dismantling the landlord's property, you may have to settle for the next-best alternative, photographs or videos. Don't wait—make your record before repairs are made. Try to have the photos date-stamped. And to forestall challenges to the accuracy of your pictures (or a claim they were doctored), have someone else take them and be prepared to testify in court that they are a fair and accurate depiction of the scene.

If you are experiencing pain, keep what's known as a "pain diary." Every day (and more often if appropriate), jot down how you feel, what you can and cannot do, and what medication you're taking to help yourself. This log may come in handy if you are asked to document your condition. But again, be thoughtful about what you write down, because this will be used as evidence in court. Probably the worst thing you can do is to overstate your injuries.

Obtain Copies of Medical Records and Evidence of Lost Wages

Insurance carriers usually ask for copies of medical records and medical bills in order to substantiate your claim of injury. It is helpful to get copies of relevant medical records in advance. Insurance companies usually do not require that you give them your entire medical file, only the portion relevant to your injury. (*In re Lifschultz,* 2 Cal.3d 415, 431 (1970).) Likewise, the adjuster or attorney for the insurance company may ask you to allow them to request your entire medical record.

Insurance companies are entitled to more medical information if your injury is related to a pre-existing condition—if, for example, you tripped and reinjured your back after having previously suffered an unrelated back injury. Even in that situation, they are not entitled to records related to other medical conditions.

If you claim that you lost work because of the injury, try to get a letter from your boss outlining what days you were off work and what your pay rate is.

Contact Witnesses

Having an eyewitness can be an immeasurable help. Witnesses can corroborate your version of events and may even have seen important aspects of the situation that you missed. But you must act very quickly to find and preserve the observations and memories of those who could bolster your case —people's memories fade quickly, and strangers can be very hard to track down later.

CAUTION

Don't tell witnesses not to talk to "the other side." Witnesses have no legal obligation to talk to you, although most will if they feel you have been wronged. Similarly, you have no authority to tell them not to talk to others. Moreover, trying to do so may come back to haunt you via a suggestion that you had something to hide. If a favorable witness tells an insurance adjuster a different story, you can expose the inconsistencies later in court.

If you find people who witnessed the incident, get their names, addresses, and as much information about what they saw as possible. Talk with them about what they saw and write it up. Ask them if they would be willing to review your summary for accuracy; if so, mail them a copy and ask them to correct it, sign it, and return it to you in the stamped envelope you have provided.

TIP

Don't overlook the witness who heard or saw another witness. It can often be important to have a witness who can describe what another witness said or did. For example, the manager who blurted out, "I told him we should have fixed that last month" will have every incentive to deny making that statement, since it pins knowledge of the defect on the property owner, his boss. If someone besides you also heard the manager say it, he'll have a tougher time disowning it. Get that person's name and statement.

Evaluate Your Case

Before you go making demands for money from your landlord or an insurance company, you need to know whether you have a legal leg to stand on. That's what most of the rest of this chapter explains. For now, remember that this evaluation step is critical and can't be skipped!

Notify the Landlord and the Insurance Carrier

Once you're convinced that you have a good case, write to the owner of the rental property, stating that you have been injured and need to deal with the owner's liability insurance carrier. You should have the owner's name and address on your lease or rental agreement (if you don't, send the letter to wherever you send the monthly rent). If you deal with a manager or management company, you should also notify them.

If a third party is involved, it won't hurt to notify them, too, if there is some basis for thinking that they may have been at least partially responsible. For example, a contractor or subcontractor may have created or contributed to the dangerous situation, or a repairperson may have done a faulty job, causing your injury.

A sample letter is shown below. If your case is substantial, you can expect that the owner will contact the insurer right away. On the other hand, a landlord who suspects that the claim is phony or trivial may hold off notifying the insurance company, fearing a rate increase or policy cancellation. You cannot force the landlord to refer the case or disclose the name of the insurer; all you can do is persevere until your persistence and the threat of a lawsuit become real enough for the landlord to call in the insurance company's help. (Or, your landlord may decide to settle with you without involving his carrier, which might be all right too, as explained below.)

Sample Letter to Landlord Regarding Tenant Injury

Alice Watson
37 Ninth Avenue North
South Fork, CA 00000
401-555-4567

February 28, 20xx

Fernando Diaz
3757 East Seventh Street
South Fork, CA 00000

Dear Mr. Diaz:

On February 25, 20xx, I was injured in a fall on the front steps of the duplex that I rent from you. The middle step splintered and collapsed as I walked down the stairs. Please refer this matter to the carrier of your business liability insurance and have them contact me at the above address.

Thank you for your cooperation.

Yours truly,
Alex Watson
Alex Watson

Negotiate, Mediate, or Sue

If you are successful at reaching the landlord's insurance carrier, chances are that you'll negotiate a settlement. You may choose mediation (in which a neutral third party helps both sides reach a settlement) if you feel that the insurance company is interested in settling the matter and will deal with you fairly. (If the result isn't adequate, you can always file a lawsuit.) But if the landlord stonewalls you, refusing to refer your claim to the insurance carrier or a lawyer, you may need to consider a lawsuit. Chapter 18 gives detailed information on negotiating with, mediating with, and suing your landlord if necessary. It also helps you decide whether to take your case to small claims court yourself, saving time and the expense of hiring a lawyer, or whether you are better off in a formal court with a lawyer.

CAUTION

Don't wait too long before filing suit. You must file your lawsuit within the time specified by California's "statute of limitations," which is two years from the date of injury for most injuries. However, choosing the proper statute of limitations can get tricky. On this point, you would be wise to consult a lawyer (you needn't hire the lawyer to handle the entire case, however).

RESOURCE

***How to Win Your Personal Injury Claim*, by Joseph L. Matthews (Nolo),** explains personal injury cases and how to work out a fair settlement without going to court.

Everybody's Guide to Small Claims Court in California, by Ralph Warner (Nolo), provides great advice on small claims court, where you can sue for up to $10,000.

Represent Yourself in Court: How to Prepare & Try a Winning Case, by Paul Bergman and Sara J. Berman (Nolo), will help you prepare and present your case should you end up in court.

Is the Landlord Liable?

It isn't always easy to determine whether the landlord is legally responsible for an injury. Basically, your landlord may be liable if both of the following conditions are met:

- your landlord was negligent in the maintenance or use of the property, and
- that negligence was a substantial factor in causing your injury.

Whether the landlord was negligent is usually the most disputed feature of a personal injury action. A landlord is required to exercise "ordinary care or skill" in managing the property. A landlord is negligent if he or she fails to exercise reasonable care in correcting any unsafe conditions under the landlord's control that the landlord knew about or should have known about.

The Landlord Did Not Exercise Reasonable Care

Figuring out whether the landlord exercised "reasonable care" can be a simple matter or a very complex one. Violating a health and safety law or certain laws that govern other aspects of the landlord-tenant relationship; or failure to make certain repairs (all discussed below), are almost always a failure to exercise reasonable care. That's because the landlord has a legal and/or contractual obligation to keep the premises safe. Likewise, if a landlord intended to harm you (by assaulting you or engaging in sexual harassment), his conduct is clearly unreasonable. Many situations, however, are less than clear and require a broader analysis as to whether the landlord acted "reasonably" under the circumstances.

Evaluating Negligence Cases

If you think your landlord's carelessness caused your injury, you'll need answers to these questions before you can expect to recover damages:

- Did your landlord control the area where you were hurt or the thing that hurt you?
- How likely was it that an accident would occur?
- How difficult or expensive would it have been for the landlord to reduce the risk of injury?
- Was a serious injury likely to result from the problem?
- Did your landlord fail to take reasonable steps to prevent an accident?
- Did your landlord's failure to take reasonable steps to keep you safe cause your injury?

These questions are addressed in detail below.

"Negligence" (or failure to exercise reasonable care) is always determined in light of the unique facts of each situation. For example, it may be reasonable to put adequate lights in a dark, remote stairwell. If your landlord doesn't, and you're hurt because you couldn't see the broken steps and fell, your landlord's failure to install the lights might be negligence. On the other hand, extra lights in a lobby that's already well-lit might or might not be a reasonable expectation.

To determine whether or not your landlord was negligent and should be held responsible for your injury, you must answer six questions. The insurance adjuster will use these same questions to evaluate your claim, as will a lawyer (if you consult one). If your case looks strong, you'll probably be able to wrest a good settlement offer from the company. And if the insurance company isn't forthcoming, you'll be able to head to court confidently, where a judge or jury will use the same questions when deciding your case.

Question 1: Did your landlord control the area where you were hurt or the thing that hurt you? The law will pin responsibility on your landlord only if he had the legal ability to maintain or fix the area or item that injured you. For example, the property owner normally has control over a stairway in a common area, and if its chronic disrepair causes a tenant to fall, the owner will likely be held liable. The owner also has control over the building's utility systems. If a malfunction causes injury (like boiling water in your sink because of a broken thermostat), he may likewise be held responsible. On the other hand, if you're hurt when your own bookcase falls on you, the landlord won't be held responsible, because he does not control how the bookcase is built, set up, or maintained.

Interestingly, the landlord may be held responsible for injuries that occur on property that he doesn't even own, as long as he makes use of it and takes no steps to fix problems or at least warn you of them. In one case, a tenant sued a landlord when the tenant tripped on a poorly maintained strip of land that actually belonged to the city, because the landlord knew that this adjacent land was regularly used by his tenants. (*Alcaraz v. Vece,* 14 Cal.4th. 1149 (1997).)

Question 2: How likely was it that an accident would occur? The landlord isn't responsible if the accident wasn't foreseeable. For example, common sense

would tell anyone that loose handrails or stairs are likely to lead to accidents, but it would be unusual for injuries to result from peeling wallpaper or a thumbtack that's fallen from a bulletin board. If a freak accident does happen, chances are your landlord will not be held liable.

Question 3: How difficult or expensive would it have been for the landlord to reduce the risk of injury? The chances that your landlord will be held liable are greater if a reasonably priced response could have averted the accident. In other words, could something as simple as warning signs, a bright light, or caution tape have prevented people from tripping over an unexpected step leading to the patio, or would major structural remodeling have been necessary to reduce the likelihood of injury? But if there is a great risk of very serious injury, a landlord will be expected to spend money to avert it. For example, a high-rise deck with rotten support beams must be repaired, regardless of the cost, since there is a great risk of collapse and dreadful injuries to anyone on or under the deck. A landlord who knew about the condition of the deck and failed to repair it would surely be held liable if an accident did occur.

Keep in mind, however, that if the defect was one that the landlord was obligated to fix (such as a problem with the electrical system) and the landlord knew or should have known of the defect, he will be held liable because failing to address it is a habitability and a code violation.

Question 4: Was a serious injury likely to result from the problem? The amount of time and money your landlord is expected to spend on making the premises safe will also depend on the seriousness of the probable injury if he fails to do so. For example, if the umbrella on a poolside table wouldn't open, no one would expect it to cause serious injury. If you're sunburned at the pool as a result, it's not likely that a judge would rule that your landlord had the duty of keeping you from getting burned. But if a major injury is the likely result of a dangerous situation—suppose the pool diving board was broken, making it likely you'd fall on the deck when using it—the owner is expected to take the situation more seriously and fix it faster.

The answers to these four questions should tell you (or an insurance adjuster or judge) whether or not there was a dangerous condition on the landlord's property that the landlord had a legal duty to deal with. Lawyers call this having a "duty of due care."

Let's look at how these first four questions would get answered in a few possible scenarios.

EXAMPLE 1: Mark broke his leg when he tripped on a loose step on the stairway from the lobby to the first floor. Since the step had been loose for several months, chances are the landlord's insurance company would settle a claim like this.

Mark's position is strong because of the answers to the four questions:

1. The landlord was legally responsible for (in control of) the condition of the common stairways.
2. It was highly foreseeable to any reasonable person that someone would slip on a loose step.
3. Securing the step would have been simple and inexpensive.
4. The probable result of leaving the step loose—falling and injuring oneself on the stairs—is a serious matter.

EXAMPLE 2: Lee slipped on a marble that had been dropped in the lobby by another tenant's child just a few minutes earlier. Lee twisted his ankle and lost two weeks' work. Lee will have a tough time establishing that his landlord had a duty to protect him from this injury. Here's what the questions turn up:

1. The landlord does have control over the public sidewalk.
2. The likelihood of injury from something a tenant drops is fairly low.
3. The burden on the landlord to eliminate all possible problems at all times by constantly inspecting or sweeping the lobby is unreasonable.
4. Finally, the seriousness of any likely injury resulting from not checking constantly is open to great debate.

EXAMPLE 3: James suffered a concussion when he hit his head on a dull-colored overhead beam in the apartment garage. When the injury occurred, he was standing on a stool, loading items onto the roof rack of his SUV. Did the landlord have a duty to take precautions in this situation? Probably not, but the answers to the four questions are not so easy.

1. The landlord exercises control over the garage, and certainly has a responsibility to reasonably protect tenants from harm there.
2. The likelihood of injury from a beam is fairly slim, since most people don't stand on stools in the garage, and those who do have the opportunity to see the beam and avoid it.
3. As to eliminating the condition that led to the injury, it's highly unlikely anyone would expect the landlord to rebuild the garage. But it's possible that a judge might think it reasonable to paint the beams a bright color and post warning signs, especially if lots of people put trucks and other large vehicles in the garage.
4. As to the seriousness of probable harm, injury from low beams is likely to be to the head, which is a serious matter.

In short, this situation is too close to call, but if an insurance adjuster or jury considered the case, they might decide that James was partially at fault (for not watching out for the beams) and reduce any award accordingly. (See "If You're at Fault, Too," below.)

If, based on these first four questions, you think the landlord had a legal duty to deal with a condition on the premises that posed a danger to you, keep going. You have two more questions to answer.

Question 5: Did your landlord fail to take reasonable steps to prevent an accident? The law won't expect your landlord to undertake Herculean measures to shield you from a condition that poses some risk. Instead, the landlord is required to take only reasonable steps. For example, if you've demonstrated that a stair was in a dangerous condition, you also need to show that the landlord's failure to fix it was unreasonable in the circumstances. Let's take the broken step that Mark (Example 1, above) tripped over. Obviously, leaving it broken for months is unreasonably careless—that is, negligent—under the circumstances.

But what if the step had torn loose only an hour earlier, when another tenant dragged a heavy footlocker up the staircase? Mark's landlord would probably concede that he had a duty to maintain the stairways, but would argue that the manager's daily sweeping and inspection of the stairs that same morning met that burden. In the absence of being notified of the problem, he would probably claim that his inspection routine met his duty of keeping the stairs safe. If a jury agreed, Mark would not be able to establish that the landlord acted unreasonably under the circumstances.

Examples of Injuries From Landlord Negligence

Here are some examples of injuries for which tenants have recovered money damages due to the landlord's negligence:

- Tenant falls down a staircase due to a defective handrail.
- Tenant trips over a hole in the carpet on a common stairway not properly maintained by the landlord.
- Tenant injured and property damaged by fire resulting from an obviously defective heater or wiring.
- Tenant gets sick from pesticide sprayed in common areas and on exterior walls without advance notice.
- Tenant's child is scalded by water from a water heater with a broken thermostat.
- Tenant slips and falls on a puddle of oil-slicked rainwater in the garage.
- Tenant's guest injured when she slips on ultraslick floor wax applied by the landlord's cleaning service.
- Tenant receives electrical burns when attempting to insert the stove's damaged plug into the wall outlet.
- Tenant slips and falls on wet grass cuttings left on a common walkway.

Question 6: Did your landlord's failure to take reasonable steps to keep you safe cause your injury? This last question establishes the crucial link between the landlord's negligence and your injury. Not every dangerous situation results in an accident. You'll have to prove that the landlord's failure to exercise reasonable care was a substantial factor in causing your injury. Sometimes this is self-evident: One minute you're fine, and the next minute you've slipped on a freshly waxed floor and have a broken arm. But it's not always so simple. For example, in the case of the loose stair, the landlord might be able to show that the tenant barely lost his balance because of the loose stair and that he had really injured his ankle during a touch football game he'd just played.

Here's a final example, applying all six questions to a tenant's injury.

> **EXAMPLE:** Scotty's apartment complex had a pool bordered by a concrete deck. On his way to the pool, Scotty slipped and fell, breaking his arm. The concrete where he fell was slick because the landlord had cleaned the pool and spilled some of the cleaning solution earlier that morning. To assess his chances of collecting against his landlord for his injury, Scotty asked himself these questions:
>
> 1. Did the landlord control the pool area and the cleaning solution? Absolutely. The pool was part of a common area, and the landlord had done the cleaning.
> 2. Was an accident like Scotty's foreseeable? Certainly. It's likely that a barefoot person heading for the pool would slip on slick cement.
> 3. Could the landlord have eliminated the dangerous condition without much effort or money? Of course. All that was necessary was to hose down the deck.
> 4. How serious was the probable injury? Falling on cement presents a high likelihood of broken bones, a serious injury.
>
> Having established that the landlord owed him a duty of care, Scotty considered the rest of his case.
>
> 1. Had his landlord also breached this duty? Yes; Scotty was sure a jury would conclude that leaving spilled cleaning solution on the deck was an unreasonable thing to do.
> 2. Did the spilled cleaning solution cause his fall? This one is easy, because several people saw the accident and others could describe Scotty's robust fitness before the fall. Scotty hadn't himself been careless (see "If You're at Fault, Too," below), so he decided he had a pretty good case.

The Landlord Violated a Health or Safety Law

The California legislature has enacted health and safety laws requiring smoke detectors, sprinklers, inside-release security bars on windows, childproof fences around swimming pools, as well as habitability obligations discussed in Chapters 6 and 7. To put real teeth behind these important laws, legislators (and sometimes the courts) have decided that if landlords don't take reasonable steps to comply with certain health or safety statutes, the law will consider them negligent. And if that negligence results in an injury, the landlord is liable for it. You don't need to prove that an accident was forseeable or likely to be serious, nor do you have to show that complying with the law would have been relatively inexpensive. The legal term for this rule is "negligence per se."

> **EXAMPLE:** State law specifies that all rental units must have smoke detectors, but there are none in your unit. A fire started at night while you were sleeping and you were injured. If you can show that had there been detectors, you would have become aware of the fire sooner and would have likely escaped without injury, you will not have to prove that the landlord was responsible for the fire starting. You only have to prove that the failure to have working smoke detectors was a substantial factor in causing your injuries.

Bear in mind that landlords are expected only to take reasonable steps to comply with safety and health laws that fall within the negligence per se realm. For example, your landlord must supply

smoke detectors. If the landlord has supplied one but you have disabled it, your landlord won't be held responsible if you are hurt by a fire that could have been stopped had you left the detector alone.

The landlord's violation of a health or safety law may also indirectly cause an injury. For example, if the landlord lets the furnace deteriorate in violation of local law, and you are injured trying to repair it, the landlord will probably be liable unless your repair efforts are extremely careless themselves.

> **EXAMPLE:** The state housing code requires landlords to provide hot water. In the middle of the winter, your hot water heater has been broken for a week, despite your repeated complaints to the landlord. Finally, to give your sick child a hot bath, you carry pots of steaming water from the stove to the bathtub. Doing this, you spill the hot water and burn yourself seriously.
>
> You sue the landlord for failure to provide hot water as required by state law. If the case goes to court, it will be up to the judge to decide whether the landlord's failure to provide hot water caused your injury. Since a judge could reasonably conclude that your response to the lack of hot water was a forseeable one, your landlord's insurance company might be willing to offer a fair settlement.

The Landlord Didn't Make Certain Repairs

For perfectly sensible reasons, many landlords do not want tenants to undertake even relatively simple tasks like painting, plastering, or unclogging a drain. Your lease or rental agreement may prohibit you from making any repairs or alterations without the owner's consent, or limit what you can do. (Chapter 8 discusses this.)

But in exchange for a landlord's reserving the right to make all these repairs, the law imposes a responsibility. If, after being told about a problem, the landlord doesn't maintain or repair something you aren't allowed to touch, and you are injured as a result, the landlord is probably liable. The legal reason is that the landlord breached the contract (the lease) by not making the repairs. (The landlord may be negligent as well; remember, there is nothing to stop you from presenting multiple reasons why the landlord should be held liable.)

> **EXAMPLE:** The Rules and Regulations attached to Lori's lease state that management will inspect and clean the fan above her stove every six months. Jake, an affable but somewhat scatterbrained graduate student in charge of maintenance at the apartment complex, was supposed to do the fan checks. But deep into his studies and social life, Jake scheduled no inspections for a long time. Lori was injured when the accumulated grease in the fan filter caught fire.
>
> Lori sued the landlord, alleging that his failure to live up to his contractual promise to clean the fan was the cause of her injuries. The jury agreed and awarded her a large sum.

Some other common examples might include:

- **Environmental hazards.** If your lease forbids repainting without the landlord's consent, the landlord is obligated to maintain the painted surfaces. If an old layer of lead paint begins to crack, deteriorate, and enter the air, the landlord will be liable for the health problems that follow. (Chapter 10 covers environmental health hazards such as lead-based paint.)
- **Security breaches.** Landlords typically forbid tenants from installing locks of their own. That means landlords may be liable if their failure to provide secure locks contributes to a crime. (See Chapter 11.)

The Landlord Didn't Keep the Premises Habitable

One of a landlord's basic responsibilities is to keep the rental property in a "habitable" condition.

Failure to maintain a habitable dwelling may make the landlord liable for injuries caused by the substandard conditions. For example, a tenant who is bitten by a rat in a vermin-infested building may argue that the owner's failure to maintain a rat-free building constituted a breach of duty to keep the place habitable, which in turn led to the injury. You

must show that the landlord knew of the defect and had a reasonable amount of time to fix it.

Remember that the defect must be serious enough such that an injury from the defect is foreseeable. For example, a large, jagged broken picture window would probably make the premises unfit for habitation, but a torn screen door obviously would not. The tenant who cut herself trying to cover the window with cardboard might sue under negligence and a violation of the implied warranty of habitability, while the tenant who injured herself trying to repair the screen would be limited to a theory of negligence.

> **EXAMPLE:** Jose notified his landlord about the mice that he had seen several times in his kitchen. Despite Jose's repeated complaints, the landlord did nothing to eliminate the problem. When Jose reached into his cupboard for a box of cereal, a mouse bit him. Jose sued his landlord for the medical treatment he required, including extremely painful rabies shots. He alleged that the landlord's failure to eradicate the rodent problem constituted a breach of the implied warranty of habitability, and that this breach was responsible for his injury. The jury agreed and gave Jose a large monetary award.
>
> The injury sustained by Jose in the example above could also justify a claim that the injury resulted from the landlord's negligence. And, if Jose's landlord had failed to take reasonable steps to comply with a state or local statute concerning rodent control, the landlord might automatically be considered negligent. Finally, the owner may also be liable if the lease forbade Jose from making repairs, such as repairing improper sewage connections or changing the way garbage was stored. As you can see, sometimes there are several legal theories that will fit the facts and support your claim for damages.

The Landlord Acted Recklessly

In the legal sense of the word, "recklessness" usually means extreme carelessness regarding an obvious defect or problem. A landlord who is aware of a long-existing and obviously dangerous defect but neglects to correct it may be guilty of recklessness, not just ordinary carelessness.

If your landlord or an employee acted recklessly, your monetary recovery could be significant. This is because a jury has the power to award not only actual damages (which include medical bills, loss of earnings, and pain and suffering) but also extra, "punitive" damages. (See "How Much Money You're Entitled To," below.) Punitive damages are almost never given in simple negligence cases, but are appropriate to punish recklessness and to send a sobering message to others who might behave similarly. But don't count your millions before you have them: In every situation, the line between ordinary negligence and recklessness is wherever the unpredictable jury thinks it should be. The size of the punitive award is likewise up to the jury, and can often be reduced later by a judge or appellate court.

The very unpredictability of punitive damage awards, however, can be to your advantage when negotiating with the landlord. The landlord may settle your claim rather than risk letting an indignant jury award you punitive damages.

> **EXAMPLE:** The handrail along the stairs to the first floor of the apartment house Jack owned had been hanging loose for several months. Jack attempted to fix it two or three times by taping the supports to the wall. The tape did no good, however, and the railing was literally flapping in the breeze. One dark night when Hilda, one of Jack's tenants, reached for the railing, the entire thing came off in her hand, causing her to fall and break her hip.
>
> Hilda sued Jack for her injuries. In her lawsuit, she pointed to the ridiculously ineffective measures that Jack had taken to deal with an obviously dangerous situation, and charged that he had acted with reckless disregard for the safety of his tenants. (Hilda also argued that Jack was negligent because of his unreasonable behavior and because he had violated a local ordinance regarding maintenance of handrails.) The jury agreed with Hilda and awarded her punitive damages.

The Landlord Intentionally Harmed You

Intentional injuries are rare but, unfortunately, they occur more often than you might guess. For example, if a landlord or manager struck and injured you during an argument, obviously that would be an intentional act for which the landlord would be liable.

Less obvious, but no less serious, are emotional or psychological injuries that can, in extreme circumstances, also be inflicted intentionally. Intentional infliction of emotional distress often arises in these situations:

- **Sexual harassment.** Repeated, disturbing attentions of a sexual nature that the harasser refuses to stop, which leave the victim fearful, humiliated, and upset, can form the basis for a claim of intentional harm.

  EXAMPLE: Rita's landlord Brad took advantage of every opportunity to make suggestive comments about her looks and social life. When she asked him to stop, he replied that he was "just looking out for her," and he stepped up his unwanted attentions. Rita finally had enough, broke the lease, and moved out. When Brad sued her for unpaid rent, she turned around and sued him for the emotional distress caused by his harassment. To his surprise, Brad was slapped with a multithousand-dollar judgment, including punitive damages.

- **Assault.** Threatening or menacing someone without actually touching them is an assault, which can be enormously frightening and lead to psychological damage.
- **Repeated invasions of privacy.** Deliberately invading a tenant's privacy—by unauthorized entries, for example—may cause extreme worry and distress. (Chapter 5 covers tenants' privacy rights.)

The Injury Was Caused by a Person Hired by the Landlord

Sometimes an injury may result from the negligence of a third party whom the landlord has hired to do work on the property. For example, a landlord may hire a carpenter to do work on a vacant unit. The carpenter leaves a mess in the hallway, causing you to trip and fall. Here, the landlord was not the direct cause of the injury. Nevertheless, the landlord has a "non-delegable duty" to maintain the premises in a safe condition and he can't shift (delegate) that duty to someone else. The landlord is therefore legally responsible for the injury. (*Srithong v. Total Investment Company,* 23 Cal.App.4th 721 (1994).) Of course, you can also look to the contractor's insurance company for compensation as well; however, many contractors do not carry insurance.

The Injury Was Caused by a Criminal Act on the Premises

Oftentimes inadequate security or other lapses by the landlord result in criminal conduct of a third party, which causes the tenant injury. This could happen because a parking lot lacks adequate lighting at night or the front door to an apartment in a high crime area does not have a working lock. A landlord's duties regarding adequate security are discussed in Chapter 6 (Major Repairs & Maintenance) and Chapter 11 (Crime on the Premises).

The law in this area is constantly evolving. Previously, landlords had no legal responsibility because the connection between the landlord's failure to exercise care and the criminal act of an unrelated party was too remote. Modern courts have recognized the connection between the failure to exercise care (such as leaving in place a non-working door lock) and a foreseeable crime (such as a burglary).

How can you determine whether your landlord failed to exercise reasonable care when it comes to security? That involves the same kind of analysis we went through when asking the question for a non-crime injury (see "The Landlord Did Not Exercise Reasonable Care," above). But in a security context, we have to place special emphasis on the foreseeability of the injury and the cost to the landlord to prevent the injury. For instance, in *Vasquez v. Residential Investments, Inc.* 118 Cal. App.4th 269 (2004), the court held a landlord liable for the murder of one of his tenants when the landlord failed to repair the front door, allowing her boyfriend to enter and later kill her. It reasoned that the cost to repair the front door was minimal while the risk of a criminal intruder was foreseeable. By contrast, *Castenada v. Olsher,* 41 Cal.4th 1205 (2007) refused to hold a landlord liable for a mobile home park tenant injured by gang members. The court stated that there was no evidence that the landlord knew of violent gang confrontations and that the landlord did not have a duty to hire security guards or install brighter lights in the park.

These types of cases are complicated and often hotly contested. Seek legal advice if you find yourself injured because of a criminal act on the premises.

If You're at Fault, Too

If you sue your landlord for negligence, the landlord may turn right around and accuse you of negligence, too. And if you are partially to blame for your injury, the landlord's liability for your losses will be reduced accordingly.

Your Own Carelessness

If you are also guilty of unreasonable carelessness—for example, you were drunk and, as a result, didn't (or couldn't) watch your step when you tripped on a loose tread on a poorly maintained stairway—the landlord's liability will be proportionately reduced.

The legal principle is called "comparative negligence." Basically, this means that if you are partially at fault, you can collect only part of the value of your losses. For example, if a judge or jury ruled that you had suffered $10,000 in damages (such as medical costs or lost earnings) but that you were 20% at fault, you would recover only $8,000. If you're 99% at fault, you'll receive only 1% of your damages from your landlord.

Your Risk-Taking

Carelessness on your part is not the only way that your monetary recovery can be reduced. If you deliberately chose to act in a way that caused or worsened your injury, another doctrine may apply. Called "assumption of risk," it refers to a tenant who knows the danger of a certain action and decides to take the chance anyway.

> **EXAMPLE:** In a hurry to get to work, you take a shortcut to the garage by cutting across an abandoned strip of pavement that you know has an uneven, broken surface. You disregard the sign posted by your landlord: "Danger: Use Front Walkway Only." If you trip and hurt your knee, you'll have a hard time pinning blame on your landlord, because you deliberately chose a dangerous route to the garage.

How Much Money You're Entitled To

If you were injured on your landlord's property and have convinced an insurance adjuster or jury that the landlord is responsible, at least in part, you can ask for monetary compensation, called "compensatory damages." Injured tenants can recover the money they have lost (wages) and spent (doctors' bills), plus compensation for physical pain and suffering, mental anguish, and lost opportunities.

Medical care and related expenses. You can recover for doctors' and physical therapists' bills, including future care. Even if your bills were covered by your own insurance company or medical plan, you can still sue for the amounts—but expect your insurance company to come after you, via a lien claim, if you recover anything in excess of your copayments or deductibles.

Missed work time. You can sue for lost wages and income while you were unable to work and undergoing treatment for your injuries. You can also recover for expected losses due to continuing care. The fact that you used sick or vacation pay to cover your time off from work is irrelevant. You are entitled to save this pay to use at your discretion at other times. In short, using up vacation or sick pay is considered the same as losing the pay itself.

Pain and other physical suffering. The type of injury you have suffered and its expected duration will affect the amount you can demand for pain and suffering. But insurance adjusters won't take your word for the level of discomfort you're experiencing. If you can show that your doctor has prescribed strong antipain medication, you'll have some objective corroboration of your distress. And the longer your recovery period, the greater your pain and suffering.

Permanent physical disability or disfigurement. If your injury has clear long-lasting or permanent effects—such as scars, back or joint stiffness, or a significant reduction in your mobility—the amount of your damages goes way up.

Loss of family, social, career, and educational experiences or opportunities. If you can demonstrate that the injury prevented you from advancing in your job or landing a better one, you can ask for compensation representing the lost income. Of course, it's hard to prove that missing a job interview resulted in income loss (after all, you didn't yet have the job). But the possibility that you might have moved ahead may be enough to convince the insurance company to sweeten their offer.

Emotional damages resulting from any of the above. Emotional pain—including stress, embarrassment, depression, and strains on family relationships—can be compensated. Like pain and suffering, however, it's hard to prove. If you have consulted a therapist, physician, or counselor, their evaluations of your reported symptoms can serve as proof of your problems. Be aware, however, that when you choose to sue for mental or emotional injuries, your doctor's notes and files regarding your symptoms and treatment will usually be made available to the other side.

In some cases, injured tenants can collect more than compensatory damages. A judge or jury may award punitive damages if it decides that the landlord acted outrageously, either intentionally or with extreme carelessness (recklessness). Punitive damages are punishments for this conduct.

CHAPTER 10

Environmental Hazards

Because of some relatively recent changes in the law, landlords must now do more than provide housing that meets minimum health and safety standards. They are also expected to deal with some serious environmental health hazards. Simply put, laws now require landlords to take steps to ensure that you and your family aren't sickened by several common hazards, including lead, asbestos, and radon. Recently, the presence of mold has gotten the attention of landlords, tenants, and legislators.

This chapter explains landlords' obligations and offers some suggestions on how to spot problem areas, work with the landlord (or housing authorities), and take steps to protect yourself.

Duty to Disclose Presence of Environmental Hazards

Because materials such as asbestos and lead are so dangerous to health, both the states and Congress have enacted laws and regulations regarding disclosure of these hazards, as well as the proper method for removing them from a building. Many landlords include with their lease packages standard form notifications regarding asbestos, lead, and mold.

- **Asbestos.** A landlord of a property built before 1981 has an obligation to notify tenants of the presence of asbestos-containing materials or presumed asbestos-containing materials if he knows or should know of their presence at the property. (29 C.F.R. 1926.1101(k)(2)(ii)(D).)
- **Lead.** An owner also has an obligation to notify tenants about the presence of lead at the property. (24 C.F.R. part 35.)
- **Mold.** If a landlord knows or has reasonable cause to believe that there are dangerous levels of mold at a property, he is required to notify all prospective and current tenants. (H&S §§ 26147(a), 26148(b).)

Landlords are required to notify you about these hazards before moving in and also during the tenancy. For example, if construction at the property may disturb asbestos or lead-based paint, or if the landlord learns about dangerous levels of mold at the property, tenants must be informed. Likewise, a landlord (or a registered pest control company) is required to notify tenants about the application of pesticides at the property. (CC §§ 1940.8, 1940.85; B&P § 8538.)

Finally, tenants must notify the landlord when they know or should know that asbestos has been disturbed. (H&S § 25359.7(b).) We highly recommend that you notify the landlord whenever you become aware of any environmental hazard.

Asbestos

Exposure to asbestos has long been linked to an increased risk of cancer, particularly for workers in the asbestos manufacturing industry or in construction jobs involving the use of asbestos materials. More recently, the danger of asbestos in homes has also been recognized.

Homes built before the mid-1970s often contain asbestos insulation around heating systems, in ceilings, and in other areas. Until 1981, asbestos was also widely used in other building materials, such as vinyl flooring and tiles. Asbestos that is intact (or covered up) is generally not a problem, and the current wisdom is to leave it in place but monitor it for signs of deterioration. However, asbestos that has begun to break down and enter the air—for example, when it is disturbed during maintenance or renovation work—can become a significant health problem to people who breathe it.

OSHA Regulations

Until quite recently, landlords had no legal obligation to test for the presence of asbestos absent clear evidence that it was likely to be a health hazard. Now, owners of buildings constructed before 1981 must install warning labels, train staff, and notify people who work in areas that might contain asbestos. Unless the owner rules out the presence

of asbestos by having a licensed inspector test the property, the law presumes that asbestos is present.

The U.S. Occupational Safety and Health Administration (OSHA) wrote these requirements to protect people who might be working in these buildings. But they are also a boon to tenants. In the process of complying with OSHA's requirements to inform and protect employees or outside contractors, your landlord will learn whether there is asbestos on the property and (based on its type and quantity) what must be done to protect the workers. But when landlords know about the presence of any dangerous defect on the rental property, regardless of the way they learned it, the law requires the landlord to take reasonable steps to make sure that tenants aren't harmed. In short, once the asbestos genie is out of the bottle, the landlord must take reasonable steps to protect your health or face the legal consequences.

Deteriorating Asbestos: An Obvious, Dangerous Defect

Problems with asbestos often arise when neither the landlord nor the tenant realizes that the material is embedded in ceilings and floors. Sometimes, however, the situation is not so subtle. Deteriorating asbestos that is open and obvious is a dangerous defect that your landlord must address pronto. It's no different from a broken front step or an inoperable front door lock. As the owner, the landlord is responsible for fixing conditions that could cause significant injury.

OSHA regulations cover two classes of materials: those that definitely contain asbestos (such as certain kinds of flooring and ceilings) and those that the law presumes contain asbestos. The second class is extremely inclusive, describing, among other things, any surfacing material that is "sprayed, troweled on, or otherwise applied." Under this definition, virtually every dwelling built before 1980 must be suspected of containing asbestos.

Asbestos or asbestos-containing materials are typically found in or on:

- sprayed-on "cottage cheese" ceilings
- acoustic tile ceilings
- vinyl flooring, and
- insulation around heating and hot water pipes.

When the Landlord Must Test for Asbestos

Landlords are required to comply with OSHA's asbestos testing and protective rules when they undertake major remodeling or renovation jobs of buildings built before 1981, as well as when they undertake lesser projects (such as the preparation of an asbestos-containing ceiling or wall for repainting). Even relatively noninvasive custodial work—such as stripping floor tiles containing asbestos—comes within the long reach of OSHA.

OSHA has concluded that buildings built after 1981 are unlikely to contain asbestos, but if your post-1981 building does have asbestos (perhaps the builder or remodeler used recycled building materials), OSHA regulations cover it, too.

Protection From Asbestos

OSHA is very specific regarding the level of training, work techniques, and protective clothing for employees whose work involves disturbing asbestos. But they do not specifically address the measures that a landlord must take to protect tenants from exposure. However, the worker protection requirements give very useful clues as to what you can reasonably expect from your landlord in the way of tenant protections. In short, the more your landlord must do to protect workers, the more she must do to warn and protect tenants, too. If she doesn't and you are injured as a result, she risks being found liable. (See Chapter 9.)

- **Custodial work.** At the low end of the asbestos-disturbing spectrum, workers doing custodial work—for example, stripping the floor tiles in the lobby—must be trained (and supervised by a trained superior) in safe asbestos-handling

techniques. Your landlord should warn all tenants that the work is planned, giving you an opportunity to avoid the area if you choose. The landlord should also make sure that tenants, their guests, and children don't come into contact with the debris. Conscientious landlords will use written notices to alert tenants, and place cones and caution tape around the area.

- **Major repairs or renovations.** If the landlord plans renovation or repair work for a pre-1981 building, the landlord must test for asbestos and provide more protection, including air monitoring, protective clothing, and medical surveillance of workers. You are entitled to appropriate warnings, and your landlord should minimize your exposure through fastidious work site procedures and isolation of dangerous materials.

EXAMPLE: Sally returned home to her apartment to find that workers were removing the ugly, stained ceiling tile in the lobby and hallways. She learned from the contractor that the project would last four days. Sally was concerned that her young sons, returning home from school in the afternoon and curious about the renovations, would hang around the halls and lobby or at least pass through them as they went in and out to play. Either way, Sally's sons would be exposed to the airborne fibers. Sally wrote a note to the landlord, explaining her concerns.

Sally's landlord recognized the reasonableness of her fears and the potential for injury. He spoke with the contractor, one who had been specially trained and licensed in asbestos removal, and arranged for the work to be done between the hours of 8 a.m. and 3 p.m. He insisted, and the contractor readily agreed, that the old tiles be removed and any asbestos-containing material covered at the end of each work day. Finally, the landlord hired two adults to monitor foot traffic in and around the renovation site, to ensure that no one lingered near the workers or came into contact with the removed materials.

How to Determine If Asbestos Is in Your Rental

You may learn of the presence of asbestos when your landlord tests in preparation for major renovations. Or, it might be obvious to you if, for example, the textured ceiling begins to slough off. Are there other ways to learn that asbestos is present?

You can't identify asbestos just by looking at it. Only someone trained in fiber identification using a special polarized light microscope can tell for sure. State-certified labs throughout California can identify asbestos in building materials. Contact a lab to find out how the sample should be collected and sent for testing. It's not an expensive test and should cost about $35 per sample. There's a list of labs on the Department of Public Health website at www.cdph.ca.gov (look for the Indoor Air Quality Program and choose asbestos).

Alerting and Motivating Your Landlord

Many landlords, unfortunately, have no idea about their duty to deal with the risks posed by asbestos. If you live in an older building and suspect that there is asbestos on the premises that is not being managed properly, alert your landlord and see to it that your health is protected. Here are some strategies.

When the asbestos is obvious but intact. Asbestos that is intact—for example, asbestos insulation that is covered with foil or wrapped with tape—probably does not pose a significant health risk to you, since the fibers can't enter the air. It is important, however, that asbestos be monitored for signs of deterioration. For example, if the tape wrapping is tearing or falling away, it is no longer doing its job of containment. If you are worried about whether asbestos-containing materials in your home are dangerous, ask your landlord, in writing, to have the material inspected by a trained professional.

CAUTION

Never disturb asbestos-containing materials. Don't drill holes in walls or ceilings that contain asbestos, or sand asbestos tiles in preparation for a new coat of paint. First, you want to protect your health. Second, intentionally disturbing asbestos will almost certainly reduce, if not defeat, any legal claim you might have if your health is harmed by an asbestos-related problem. The law won't hold your landlord responsible for an injury that you deliberately courted, ignoring a risk you knew about.

When the asbestos is obvious and airborne. Take immediate action if asbestos in your living space has begun to break down or slough off. Asbestos that has begun to break down is extremely dangerous. If it is present in your living space in any significant amount, it makes your premises legally uninhabitable. (See Chapter 6 for your legal options, which may include withholding rent. Also, the text below discusses the option of moving out.) A sample letter from a tenant concerned about deteriorating asbestos is shown below.

TIP

Keep copies of all correspondence regarding asbestos or other environmental health hazards. If your landlord fails to take the right steps and you want to move out or seek other legal remedies, you'll need to be able to prove that you notified the landlord of the problem and waited a reasonable amount of time for a response.

How do I know whether work is being done properly? Asbestos abatement procedures are complicated and can only be done by people who are specially trained and licensed to do it. For instance, workers have to wear respirators and special protective clothing, put up plastic containment chambers to keep the asbestos from spreading throughout the unit or building, and post signs warning people in the area that asbestos is being disturbed. If you believe that asbestos removal is being done and you do not see the above safety measures in action, then unlicensed persons are likely doing the work. For the sake of your own health and that of the workers, you need to take immediate action, as explained just below.

When custodial or repair work is done improperly. When it comes to asbestos removal, the people who suffer most from a landlord's disregard of workplace safety are usually the workers themselves. But improper asbestos removal or disturbance is likely to affect you, too. Fortunately, there is something you can do about it. OSHA wants to hear about violations of workplace safety rules. You can reach OSHA by calling the phone number listed below in "Asbestos Resources." The California Department of Industrial Relations is the state equivalent of OSHA, and you can contact it, too (see "Asbestos Resources" for details, below).

Sample Letter Regarding Deteriorating Asbestos

37 Ninth Avenue North
Central City, California 00000
312-555-4567

February 28, 20xx

Margaret Mears
3757 East Seventh Street
Central City, California 00000

Dear Ms. Mears:

As you know, the ceilings in my apartment are sprayed-on acoustical plaster. I have begun to notice an excessive amount of fine, white dust in the apartment, and I believe it is the result of the breakdown of the plaster. I am quite concerned about this, because the acoustical material may contain asbestos, and inhaling asbestos can cause serious illness. Please contact me immediately so that you can take a look and arrange for a licensed inspector to examine the ceilings.

Yours truly,

Terry Lu

Terry Lu

Move Out If Necessary

Sometimes it isn't possible to shield yourself from the effects of deteriorating asbestos, or even your landlord's major repairs or renovations involving asbestos. For example, if the acoustic ceilings in your apartment are being removed, it is unlikely (even if you and your landlord are prepared to take every precaution) that you can avoid inhaling some dangerous airborne fibers. In situations like this, especially if you or your family have health problems that make you especially vulnerable to the effects of asbestos, the best alternative might be to move out temporarily until the work is completed. (See Chapter 6 for a discussion of moving out because your rental is uninhabitable.) Since the responsibility to repair and maintain the structure is the landlord's, the cost of temporary shelter should be covered by the landlord as long as you can convincingly establish that remaining on the premises would constitute a significant health risk. (See the sample letter below.)

If you are able to give valid reasons why you should be temporarily absent while the asbestos removal work is done, and if you have a reasonable landlord who appreciates the potentially serious legal consequences of denying your reasonable request, chances are you'll be able to come to an agreement. (Don't ask to stay at the Ritz, however!)

But what if the landlord stubbornly refuses? Obviously, to protect your health, you'll want to move out anyway. And assuming the asbestos problems really are serious, you should stand a good chance of prevailing in a small claims court lawsuit for the cost of your temporary housing. Be sure to keep a copy of the letter you have sent (preferably by certified mail) to the landlord, a record of the landlord's refusal to pay for temporary accommodations, and all receipts for your expenses.

Sample Letter Requesting Reimbursement for Temporary Housing

1289 Central Avenue, Apartment 8
Anytown, CA 00000
713-555-7890

June 13, 20xx

Mr. Frank Brown, Owner
Sunshine Properties
75 Main Street
Anytown, CA 00000

Dear Mr. Brown:

I have just received the notice you sent to all tenants on the first floor, alerting us to your plans to tear out the heating ducts and insulation during the week of July 6. The work will involve removing heating vents inside our apartment and removing the asbestos insulation through the openings. You estimate that the work will take two days for each apartment.

I do not think that it would be a good idea for me and my elderly mother to live in the apartment during this process. I am concerned that we will inhale airborne asbestos fibers that may cause difficulties in breathing. My mother suffers from chronic bronchitis and cannot risk exposure to anything that might worsen the condition. Dr. Jones, who treats my mother, would be happy to corroborate this fact.

I think that the best solution would be for us to move out while this work is being done. The nearby Best California Motel has reasonable rates and would be convenient to our jobs and transportation. Please contact me so that we might discuss this before the renovation work begins. You can call me at home at the above number most nights and weekends.

Yours truly,

Sharon Rock
Sharon Rock

cc: Dr. Jones

Asbestos Resources

For further information on asbestos rules, inspections, and control, contact the nearest office of the U.S. Occupational Safety and Health Administration (OSHA). Find the closest office at www.osha.gov or call 800-321-OSHA (6742). OSHA has lots of information on its website; look for asbestos in the A to Z index at www.osha.gov.

OSHA has also developed interactive computer software for property owners, called "Asbestos Advisor," designed to help identify asbestos and suggest ways to handle it. It may help you, or interested members of any tenants' association in your building, to determine whether asbestos is present and whether your landlord is managing it properly. The "Asbestos Advisor" is available free on OSHA's website, www.osha.gov.

California has a state counterpart to the federal OSHA regulations (the law relevant to landlords is known as California's Asbestos Standards in General Industry (8 CCR § 5208)). Information on state enforcement is on the Department of Industrial Relations' website at www.dir.ca.gov/dosh/asbestos.html.

TIP

Come to court prepared with asbestos-related information. If you go to small claims court, be prepared to explain the serious dangers of breathing asbestos fibers to the judge and why the landlord's work was so invasive that temporarily moving out was your only sensible alternative. (See "Asbestos Resources," above. Also, see Chapter 17 for a discussion of small claims lawsuits.)

Instead of suing in small claims court, you may be tempted to utilize what the law calls a "repair and deduct" remedy (discussed in Chapter 7) by simply deducting the cost of replacement housing from your rent. Your landlord might respond by terminating your tenancy and filing for eviction for nonpayment of rent. If you lose, you will not only have to pay for the cost of the temporary housing, but face eviction from your rental as well. (In addition, you may be stuck with the landlord's attorney fees if there is an "attorney fees" clause in your lease. See "Lease Terms to Watch Out For" in Chapter 1.) It's far better to file a straightforward lawsuit asking for reimbursement, where the risk is simply losing the suit, not your home.

If your landlord refuses to cover temporary housing expenses, you might also want to consider moving out permanently. This option is most appropriate when the risk is great and the length of exposure relatively long. But to justify breaking the lease (and to avoid liability for future rent), you will have to be able to show that airborne asbestos really did make the premises uninhabitable. (See Chapter 6 for a full discussion of breaking the lease due to uninhabitability.) If the landlord is ripping out whole ceilings over a month's time, this argument will be strong. However, it will not amount to much if the landlord is drilling two small holes in the ceiling to install a smoke detector.

Court-Ordered Renovations

Local health authorities may sue a landlord who fails to repair code violations in a reasonable time. If a judge rules that the rental property's conditions "substantially endanger the health and safety of residents," and if your landlord must ask you to move in order to make repairs, state law dictates what happens:

- The landlord must provide you with comparable temporary housing nearby (you still pay your original rent to the landlord). If comparable housing isn't possible, the landlord pays the difference between the old rent and your new rent elsewhere, for up to four months.
- The landlord must pay your moving expenses, including packing and unpacking costs.
- The landlord insures your belongings in transit, or pays for the replacement value of property lost, stolen, or damaged in transit.
- The landlord pays your new utility connection charges.
- You must have the first offer to move back in when repairs are completed. (H&S § 17980.7.)

Lead

Exposure to deteriorating lead-based paint and lead water pipes may lead to serious health problems, particularly in children. Brain damage, attention disorders, and hyperactivity have all been associated with lead poisoning. Studies show that the effects of lead poisoning are lifelong, affecting both personality and intelligence. In adults, the effects of lead poisoning can include nerve disorders, high blood pressure, reproductive disorders, and muscle and joint pain.

Lead Inspections

Although inspections are not required by state or federal law, landlords may voluntarily arrange for an inspection in order to certify on the disclosure form that the property is lead-free and exempt from federal regulations. (See list of exemptions, below.) Also, when a property owner takes out a loan or buys insurance, the bank or insurance company may require a lead inspection.

Professional lead inspectors don't always inspect every unit in large, multifamily properties. Instead, they inspect a sampling of the units and apply their conclusions to the property as a whole. Giving you the results and conclusions of a building-wide evaluation satisfies the law, even if your particular unit was not tested. If, however, your landlord has specific information regarding your unit that is inconsistent with the building-wide evaluation, he or she must disclose it to you.

(For information on arranging a professional lead inspection or using a home testing kit, see "Dealing With Lead on Your Own," below.)

Buildings constructed before 1978 are likely to contain some source of lead: lead-based paint, lead pipes, or lead-based solder used on copper pipes. In 1978, the federal government required the reduction of lead in house paint; lead pipes are generally found only in homes built before 1930, and lead-based solder in home plumbing systems was banned in 1988. Pre-1950 housing in poor and urban neighborhoods that has been allowed to deteriorate is by far the greatest source of lead-based paint poisonings.

Discovering (or being told by the landlord) that there is lead on the premises is not necessarily the end of a healthy and safe tenancy. In fact, the mere presence of lead-based paint is not necessarily harmful to health. Lead-based paint is not a health hazard as long as it is intact (which includes being covered by an impermeable layer of a different paint or other substance). The danger arises when old paint becomes loose or chipped, creating lead-based dust or particles that may be inhaled or ingested. The danger posed by lead in the soil depends on its concentration.

How Lead Poisoning Occurs

Lead-laden dust caused by the deterioration of exposed lead-based paint is the greatest source of lead poisoning. Falling on windowsills, walls, and floors, this dust makes its way into the human body when it is stirred up, becomes airborne, and is inhaled, or when it is transmitted directly from hand to mouth. Exterior lead-based house paint is also a potential problem because it can slough off walls directly into the soil and be tracked into the house.

Lead dust results from renovations or remodeling —including, unfortunately, those very projects undertaken to rid premises of the lead-based paint. Lead poisoning can also occur from drinking water that contains leached-out lead from lead pipes or from deteriorating lead solder used in copper pipes.

Children between the ages of 18 months and five years are the most likely to be poisoned by lead-based paint. Their poisoning is detected when they become ill or, increasingly, in routine examinations that check for elevated blood levels of lead.

Recognizing Lead in Your Home

If your landlord has tested for lead and complied with federal disclosure requirements, you can skip this section. However, most landlords have not tested for lead. (This situation will surely change as banks and insurance companies begin to require testing as a prerequisite to loans and insurance coverage.) There are several clues as to whether there is lead in or around your home, and ways that you (or, ideally, your landlord) can find out for sure.

The easiest and most reliable way to test for lead is to take a sample (for instance, a chip of lead-based paint or soil sample) and mail it to a laboratory that tests for lead. You can easily find a lab by doing an Internet search. Call the lab in advance to find out the correct procedure for obtaining the sample. The lab will mail you the results and let you know whether the paint or soil contains dangerous levels of lead. You can then pass this information on to your landlord.

Paint

Your first step should be to determine the age of the building. If the landlord doesn't know or won't say, go to the local building permit office and ask to see the building's construction permit. If there is no permit on file, you'll have to estimate the structure's age.

As noted above, housing that was built before January 1, 1978, is almost certain to have lead-based paint. But buildings constructed later may have it, too, since the 1978 ban did not include a recall and lead-based paint remained on the shelves.

Lead Pipes

Pre-1930 construction generally used lead pipes. It's difficult to know for sure whether you have lead pipes until you examine the plumbing. When you look under the sink, you may be able to see the pipe coming out from the wall; if so, look for the tell-tale dark gray color. A plumber should be able to identify the pipes without difficulty.

Lead Solder

Lead solder was used to join sections of pipe as recently as 1988. You won't know whether it was used unless you can look at several soldered junctions; even then, you will probably need a plumber to tell you whether the solder was leaded or not.

Imported Vinyl Miniblinds

In 1996, the Consumer Product Safety Commission announced that miniblinds from China, Taiwan, Indonesia, and Mexico are likely to contain lead, which manufacturers add to stabilize the plastic. (American-made blinds may have also contained lead and are now made without lead, and should so state on the package.) As the surface vinyl deteriorates in the sun, lead dust enters the air. Even when landlords know that an apartment has leaded miniblinds, they don't have to tell tenants *unless* they know that the blinds have begun to deteriorate and produce lead dust. Be smart: Ask the landlord to replace old blinds now, before a problem occurs.

Soil

For decades, American cars ran on leaded gasoline —and the effects are still with us. Exhaust from lead-burning cars contains lead, which falls to the ground where it remains, relatively inert, for years. Neighborhoods adjacent to heavily traveled roadways have significant amounts of lead in the soil; the readings drop off dramatically as the distance from the roads increases. If you live near a busy freeway or throughway, assume the worst and take care of yourself. (See "Getting the Landlord to Act," below, for suggestions on self-help.)

During renovation work

As we explained at the outset, lead is a problem when it has begun to deteriorate. Renovation work often includes removing or sanding painted surfaces; and when the paint is lead-based, this can result in lead paint dust, which can be inhaled or ingested.

As with asbestos removal, renovating that includes disturbing lead-based paint requires special training and specified procedures. If you think that renovations in your rented space or the common areas are causing lead particles to become airborne or potentially airborne, you need

to act very quickly. Notify the landlord of your concerns, but also notify local officials such as the health department or the building or housing departments. Tell the inspectors that construction work is causing lead-based dust to become airborne.

Federal Protections

Unfortunately, neither federal nor state law require landlords to test for lead, nor do they require landlords to get rid of it if they know it's present. Still, the laws aimed at reducing lead poisoning do give some important benefits to tenants. At the least, if the landlord knows there are lead paint hazards on the premises, you're entitled to know that.

Rental Properties Exempt From Federal Regulations

- Housing for which a construction permit was obtained, or on which construction was started, after January 1, 1978. Older buildings that have been completely renovated since 1978 are *not* exempt, even if every painted surface was removed or replaced.
- Housing certified as lead-free by a state-accredited lead inspector. Lead-free means the absence of any lead paint—even paint that has been completely painted over and encapsulated.
- Lofts, efficiencies, studios, and other "zero-bedroom" units, including dormitory housing and rentals in sorority and fraternity houses. University-owned apartments and married student housing are not exempt.
- Short-term vacation rentals.
- A single room rented in a residential home.
- Housing designed for persons with disabilities (as explained in HUD's Fair Housing Accessibility Guidelines, 24 C.F.R., Ch. I, Subchapter A, App. II) *unless* any child less than six years old resides there or is expected to reside there.
- Retirement communities (housing designed for seniors, where one or more tenant is at least 62 years old) *unless* children under the age of six are present or expected to live there.

Lead-Based Paint Disclosure

All property owners must inform tenants, before they sign or renew a lease or rental agreement, of any information they possess on lead paint hazard conditions on the property. They must disclose information on its presence in individual rental units, common areas, garages, tool sheds, other outbuildings, signs, fences, and play areas. If the property has been tested (testing must be done only by state-certified lead inspectors), a copy of the report, or a summary written by the inspector, must be shown to tenants.

With certain exceptions (listed below), every lease and rental agreement must include a disclosure page, even if the landlord has not tested. You can see the federally approved disclosure form "Disclosure of Information on Lead-Based Paint or Lead-Based Paint Hazards" by going to the Environmental Protection Agency's website, www.epa.gov/lead.

If you were a tenant in your current home on December 6, 1996, your landlord must comply with these disclosure requirements according to whether you are a tenant with a lease or are renting month to month.

- **Tenants with leases.** Your landlord need not comply until your lease is up and you renew or stay on as a month-to-month tenant.
- **Month-to-month tenants.** Your landlord should have given you a disclosure statement when you wrote your first rent check dated after December 6, 1996 (September 6, 1996, if the landlord owns five or more units).

Information

The landlord must give all tenants the lead hazard information booklet "Protect Your Family From Lead in Your Home," written by the Environmental Protection Agency (EPA). If they choose, landlords may reproduce the booklet in a legal-size, 8½ x 14-inch format, and attach it to the lease. California's pamphlet, "Residential Environmental Hazards: A Guide for Homeowners, Buyers, Landlords and Tenants," is a legally approved substitute.

(You'll find this on the California Department of Public Health website at www.cdph.ca.gov.)

If your landlord has not given you a disclosure form or an EPA booklet, ask for them. If you get no results, notify the EPA. This will probably result in no more than a letter or call from the inspectors, since the EPA will usually not cite landlords unless their noncompliance with the laws is willful, widespread, and continuing. But a landlord who continues to ignore the law may be subject to the penalties described below.

Enforcement and Penalties

HUD and the EPA enforce renters' rights to know about the presence of lead-based paint by using "testers," as they do when looking for illegal discrimination (see Chapter 4). Posing as applicants, testers who get the rental will document whether landlords disclosed lead paint information when they signed the lease or rental agreement. Of course, individual complaints from tenants who have not received the required booklets can trigger an investigation, too.

Landlords who fail to distribute the required information booklet, or who do not give tenants the disclosure statement, may be fined up to $16,000 per violation for willful and continuing noncompliance.

Government testers are also on the lookout for property owners who falsely claim that they have no knowledge of lead-based paint hazards on their property. Here's how it often comes up: A tenant complains to HUD if he becomes ill with lead poisoning after the landlord told him that she knew of no lead-based paint hazards on the premises. If HUD decides to investigate whether, in fact, the landlord knew about the hazard and failed to tell this tenant, their investigators get access to the landlord's records. They comb leasing, maintenance, and repair files—virtually the landlord's entire business records. If HUD finds evidence that the landlord knew (or had reason to know) of lead paint hazards, such as a contract from a painting firm that includes costs for lead paint removal or a loan document indicating the presence of lead paint, the landlord will be hard-pressed to explain why she's checked the box on the disclosure form stating that she has no reports or records regarding the presence of lead-based paint on the property. The tenant, in turn, will have good evidence to use in court.

Federal Rules Covering Renovations

When landlords renovate occupied rental units or common areas in buildings constructed before 1978, EPA regulations require that current tenants receive lead hazard information before the renovation work begins. (40 C.F.R. §§ 745.80-88.)

The obligation to distribute lead information rests with the "renovator." If the landlord hires an outside contractor to perform renovation work, the contractor is the renovator. But if the landlord, property manager, superintendent, or other employees perform the renovation work, the landlord is the renovator and is obliged to give you the required information.

The type of information that the renovator must give you depends on where the renovation is taking place. If the landlord is working on an occupied rental unit, resident tenants must get a copy of the EPA pamphlet "Protect Your Family From Lead in Your Home" (even if you already got one when you moved in). If common areas will be affected, the landlord must distribute a notice to every rental unit in the building.

What Qualifies as a Renovation?

According to EPA regulations, a "renovation" is any change to an occupied rental unit or common area of the building that disturbs painted surfaces. Here are some examples:

- removing or modifying a painted door, wall, baseboard, or ceiling
- scraping or sanding paint, or
- removing a large structure like a wall, partition, or window.

Not every renovation triggers the federal law, though. There are four big exceptions:

Emergency renovations. If a sudden or unexpected event, such as a fire or flood, requires emergency repairs to a rental unit or to the property's common areas, there's no need to distribute lead hazard information to tenants before work begins.

Minor repairs or maintenance. Minor work that affects two square feet or less of a painted surface is also exempt. Minor repairs include routine electrical and plumbing work, so long as no more than six square feet of the wall, ceiling, or other painted surface gets disturbed by the work, or 20 square feet or less on the exterior.

Renovations in lead-free properties. If a licensed inspector has certified that the rental unit or building in which the renovation takes place contains no lead paint, the landlord isn't required to give out the required information.

Common area renovations in buildings with three or fewer units. Tenants in buildings with three or fewer units are not entitled to information about common area renovations.

If your landlord has repainted a rental unit in preparation for your arrival, this won't qualify as a "renovation" unless accompanied by sanding, scraping, or other surface preparation activities that may generate paint dust. Minor "spot" scraping or sanding can qualify for the "minor repairs and maintenance" exception if no more than two square feet of paint is disturbed on any surface to be painted. (EPA Interpretive Guidance, Part I, May 28, 1999.)

Receiving the EPA Pamphlet When Your Rental Is Renovated

Before starting a renovation to an occupied rental unit, the renovator must give the EPA pamphlet "Renovate Right: Important Lead Hazard Information for Families, Child Care Providers, and Schools" to at least one adult occupant of the unit being occupied, preferably the tenant. This requirement applies to all rental properties, including single-family homes and duplexes, unless the property has been certified lead-free by a licensed inspector.

The renovator may mail or hand-deliver the pamphlet to you. If the landlord mails it, he must get a "certificate of mailing" from the post office dated at least seven days before the renovation work begins. You should get the pamphlet 60 days (or fewer) before the work begins (delivering the pamphlet more than 60 days in advance won't satisfy the landlord's obligations under the law).

Notice of Common Area Renovation

If the building has four or more units, the renovator —be it the landlord or his contractor—must notify tenants of all "affected units" about the renovation and tell them how to obtain a free copy of the EPA pamphlet "Protect Your Family From Lead in Your Home." (C.F.R. § 745.84(b)(2).) In most cases, common area renovations will affect all units in the property, meaning that all tenants must be notified about the renovation. But when renovating a "limited use common area" in a large apartment building, such as the 16th floor hallway but no others, the landlord need only notify those units serviced by, or in close proximity to, the limited use common area. The EPA defines large buildings as those having 50 or more units.

To comply, the renovator must deliver a notice to every affected unit describing the nature and location of the renovation work, its location, and the dates the renovator expects to begin and finish work. If the renovator can't provide specific dates, he may use terms like "on or about," "in early June," or "in late July" to describe expected starting and ending dates for the renovation. The notices must be delivered within 60 days before work begins. The notices may be slipped under apartment doors or given to any adult occupant of the rental unit. Landlords may not mail the notices.

Penalties

Failing to give tenants the required information about renovation lead hazards can result in harsh penalties. Renovators who knowingly violate the regulations can get hit with a penalty of up to $25,000 per day for each violation, and willful

violations can also result in imprisonment. (40 C.F.R. § 745.87; 15 U.S.C. § 2615.)

RESOURCE

Lead regulations and laws. The Residential Lead-Based Paint Hazard Reduction Act was enacted in 1992 to reduce lead levels. It is commonly referred to as Title X [Ten] (42 U.S.C. § 4852d). The Environmental Protection Agency (EPA) has written regulations that explain how landlords should implement lead hazard reduction (24 C.F.R. Part 35 and 40 C.F.R. Part 745). California has enacted several statutes that target workplaces and schools, and focus on childhood poisoning prevention. (For more information, see "Resources: Lead," below.)

Dealing With Lead on Your Own

You don't need to automatically reject, or move out of, a rental that contains lead. Remember, only deteriorating lead is the culprit.

If you have seen some deterioration and have confirmed that lead is present by doing the testing suggested above, it might be time to alert your landlord in writing. Your landlord should hire a professional to evaluate the situation and present a "scope of work" to "remediate" the lead. Unfortunately, not all landlords appreciate the dangers that lead may present. If your landlord refuses to take proper steps, you may have to act on your own. If you can afford it, we recommend that you hire a certified lead inspector or a certified lead risk assessor. That person will assess the presence and extent of lead and recommend appropriate steps to deal with it. You may also ask the inspector about precautions you can take to limit your exposure.

An individual assessment of your home is the best way to determine if there is a problem, the extent of the problem, and what should be done to make your home safe. If you cannot afford such an assessment, here are examples of some precautions recommended by professionals:

- Vacuum thoroughly and regularly, using a "HEPA" ("high energy particle arresting") vacuum that will filter out the fine lead dust. Ask your landlord to provide one.
- Even where a unit has been repainted, the old lead paint layer will eventually be reexposed if the surface gets a lot of wear, such as door and windowsill areas. Wash them with a phosphate-based cleaner or a solution (like "Leadisolve") designed for lead pick-up.

CAUTION

Don't disturb lead paint in buildings built before 1978. Do not sand walls, windowsills, doors, or other surfaces—you'll risk releasing lead into the air (possibly even from paint several layers down), creating the very hazards you are attempting to avoid. Only painters who have been trained and equipped to capture and remove lead dust and chips should undertake renovations of this order. If you knowingly disturb lead and suffer an injury, it will be difficult to place legal responsibility on your landlord.

- If your unit has lead pipes or copper pipe with lead solder, draw water out of the pipes by letting the taps run for 30 seconds before using—even if you plan to boil it for tea. Don't use hot water for cooking. Better yet, use bottled water for drinking and cooking.
- If lead is in the soil outside, provide throw rugs at each entrance or ask folks to remove their shoes before entering.
- Consider covering lead-laced soil with sod or an impermeable material.
- If your household has young children (especially those who are still crawling), use extra care to clean floors, especially around windows. Wash children's toys and hands frequently, and clean pacifiers and bottles after they fall on the floor.
- Test your children for lead poisoning. Elevated blood levels in young children can be picked up in a simple blood test. Increasingly, the test is done as part of routine check-ups. If

you live in a building that you suspect places your child at risk for lead poisoning, you need this information to protect your child. The Centers for Disease Control and Prevention recommend giving children a blood level test at age six months to one year. Do follow-up tests as needed.

CAUTION

If a child's blood lead level is very high, move promptly and see a lawyer. Evidence of lead poisoning will almost certainly entitle you to move out on the grounds of uninhabitability. (See "Move Out If Necessary," below.) You will definitely need expert legal assistance if you sue for damages.

Getting the Landlord to Act

Getting your landlord to hire a professional to test and assess the risk of lead poisoning may be a tall order—after all, no federal or state law requires it. And it may be next to impossible to get your landlord to paint over deteriorating lead paint. But even the most penurious, callous, or short-sighted landlord may respond to a threat to the bottom line.

Many landlords have learned (sometimes the hard way) that testing for lead and taking measures before tenants get sick is well worth the cost and time. Although landlords aren't liable for lead poisoning unless it can be shown that they knew that lead was present, these days it is increasingly difficult for landlords to plausibly argue that they were ignorant of this well-publicized issue. Lawsuits for lead poisoning can result in astronomical jury awards or settlements if the landlord is held responsible for the lifetime effects of an infant's brain damage. The cost of testing, risk assessment, and lead management pales in comparison.

Notify the Landlord of Problems

If you discover a lead hazard on the property, tell the landlord at once, in writing. A sample letter is shown below.

Sample Letter Regarding Lead Test Results

45 East Avenue North
Central City, CA 00000
816-555-7890

February 28, 20xx

Lester Levine
3757 East Seventh Street
Central City, CA 00000

Dear Mr. Levine:

We recently hired the environmental engineering firm of Checkit & Howe to test our duplex for the presence of lead-based paint. A report of their findings is enclosed. As you can see, there is indeed old, unstable lead paint on most of the windowsills and in the upstairs hall.

We are concerned about the effect that this deteriorating paint will have on the health of our children, aged three months and three years. At a minimum, we would like to discuss a safe and effective response to this problem. Please contact us as soon as possible so that we can arrange a meeting. We're home in the evenings and on weekends.

Yours truly,

Maynard G. and Zelda Krebs
Maynard G. and Zelda Krebs

Encl: Report of Checkit & Howe

Although the goal of your efforts is a safe place to live, not a successful lawsuit, don't lose sight of the fact that your landlord may avoid liability for lead injuries unless you can show that the landlord knew (or should have known) of lead hazards and failed to take reasonable steps to reduce them. In short, if you believe there is a lead risk on your property, you want to make it impossible for the landlord to plausibly deny knowing about it. If you use a kit to test your rental unit or its water supply and find the presence of lead, send the results (certified mail) to the landlord. If your child

has elevated blood levels, do the same. Keep these receipts and any other evidence of the landlord's knowledge, such as notes of a conversation in which the landlord acknowledged the presence of pre-1978, chipping paint but refused to buy a HEPA vacuum.

TIP

Educate your landlord. If the landlord isn't aware of the potentially enormous liability for lead poisoning, try this tactic: Go to the websites mentioned below in "Resources: Lead" and print the pages or pamphlets that explain the risks to landlord who ignore the writing (and the paint) on the wall.

Involve State, Local, or Federal Inspectors

Under state law and the ordinances of some cities (such as San Francisco), health inspectors have the power to inspect and order cleanups when a tenant complains to their enforcement agencies or reports a child's elevated blood level. (H&S §§ 124160, 124165.) You can also report a lead problem to your local EPA office (for contact information, see "Resources: Lead," below).

Consider a Lawsuit

Some lead-management measures, such as scrupulous housekeeping, are more time-consuming than expensive. However, money enters the picture when there's so much lead dust that containment is the only reasonable response—for example, sealing lead-based paint by covering it with a durable finish. If actual removal of the painted surfaces is necessary (perhaps the underlying structure is so deteriorated that it must be replaced), considerable expense is in the offing.

Forcing the landlord to deal with lead on the property will involve asking a judge to issue an order that directs that the work be accomplished in a certain way within a certain time. Lawsuits like this cannot be filed in small claims court. These lawsuits are typically complicated affairs that require lawyers. They can be very effective when a group of tenants sue together. (See Chapter 18 for suggestions on finding and working with a lawyer.)

Resources: Lead

Information on the evaluation and control of lead dust, and copies of the "Protect Your Family From Lead in Your Home" pamphlet, may be obtained from the regional offices of the federal EPA or by calling the National Lead Information Center at 800-424-LEAD. Information (including pamphlets on renovation and a parents' guide) is also available from the EPA on its website: www.epa.gov/lead.

The U.S. Occupational Safety and Health Administration (OSHA) has developed interactive software, "Lead in Construction Advisor," that will help you assess the lead problems on your property and design appropriate responses. You can find the program on the OSHA website at www.osha.gov.

The U.S. Department of Housing and Urban Development (HUD) issues a pamphlet entitled "Guidance on the Lead-Based Paint Disclosure Rule, Parts I and II," which is available on the HUD website at www.hud.gov/offices/lead.

For a copy of the California Department of Public Health's "Residential Environmental Hazards: A Guide for Homeowners, Homebuyers, Landlords, and Tenants," contact the Department of Public Health at 800-597-LEAD. Their website is www.cdph.ca.gov.

The lead paint renovation rules can be found at 40 C.F.R. Part 745, Federal Register Vol. 63, No. 104, pp. 29908–29921.

If you spend time and money dealing with lead containment—using special detergents or vacuums, devoting extra time to fastidious housekeeping, putting up with the intrusion of contractors trying to deal with the lead problem—ask your landlord to reduce the rent accordingly. After all, these expenses are necessitated by the dilapidation of the property. If the landlord refuses and you have a lease requiring that you live in the unit for months or years, consider going to small claims court for an order reducing your rent, and ask that you be compensated

for past labor and expenses, too. (See Chapter 7 and *Everybody's Guide to Small Claims Court in California,* by Ralph Warner (Nolo), for help.)

Move Out If Necessary

If the risk of lead poisoning is high and cannot be controlled, the smartest move may be moving out. Here are two scenarios that usually justify a move:

The rental is permeated with lead that you cannot effectively control. If lead constitutes a serious danger to your health—perhaps deteriorating paint has caused a serious lead dust problem, or old lead pipes have contaminated the water supply—you would be justified in breaking the lease and moving out on the grounds that your unit is legally uninhabitable. (See Chapter 6 for more on this topic.) To help counter any possible lawsuit by the landlord against you for future unpaid rent, be sure that you have your evidence in hand, such as a report from an EPA inspector or a state or local health inspector.

Renovations will create a lead problem. If the landlord plans repairs or renovations in an effort to contain a serious lead problem, you may be wise to leave the premises. Even meticulous cleanup procedures cannot eliminate the risk of inhaling lead dust created by renovation. California law requires the landlord to cover temporary housing expenses incurred when tenants must move out (see Chapter 6).

Radon

Radon is a naturally occurring radioactive gas that is associated with lung cancer. The U.S. Environmental Protection Agency (EPA) estimates that over one-quarter of American homes have unacceptably high levels of radon. Radon can enter and contaminate a house built on soil and rock containing uranium deposits. It can also enter through water from private wells drilled in uranium-rich soil.

Radon becomes a lethal health threat when it enters from the soil and is trapped in homes that are over-insulated or poorly ventilated. Radon is a smaller risk when it escapes from building materials that have incorporated uranium-filled rocks and soils (like certain types of composite tiles or bricks), or is released into the air from aerated household water that has passed through underground concentrations of uranium. Problems occur most frequently in areas where rocky soil is relatively rich in uranium and in climates where occupants keep their windows tightly shut to maintain heat in the winter and air conditioning in the summer. If you smoke and your house has high radon levels, your risk of developing lung cancer is especially high.

Fortunately, there are usually simple, inexpensive ways to measure and reduce radon levels in buildings. For example, good ventilation will disperse the gas in most situations. Solutions range from the obvious (open the windows) to the somewhat complex (use fans), but none of them involves tremendous expense.

There are no California or federal laws that require a private landlord to try to detect or get rid of radon. The radon problem has not become the subject of national laws requiring testing or even disclosure. But if you find radon in your rented property, there are still things you can do.

Finding Radon

Radon is invisible and odorless. To test the air in your house, you can buy a do-it-yourself kit (make sure it says "Meets EPA Requirements") or hire a professional. Testing takes at least three days, and sometimes months. Testers should have a certificate issued by the National Environmental Health Association (NEHA) or the National Radon Safety Board (NSRB). (H&S § 106780.)

Testing for radon makes sense if you live in an area that is naturally rich in uranium soil and rock, such as the Sierra region. For information on your county, check at EPA's map of radon zones at www.epa.gov/radon/zonemap.html. Visit your public

library and ask how you can find out about your local geology. City planning departments, insurance brokers (who may have experience in dealing with radon-related claims), architects (who ought to understand the local geology), environmental engineers, and neighbors may be fruitful sources.

Solving Radon Problems

If radon is present in significant amounts, it needs to be blown out and kept out of the building.

Getting it out. Once radon has entered the house, it needs to be dispelled with fans and open windows. Because of the increased costs of heating and air conditioning, and the loss of security when windows are left open, these methods should be only temporary. The only good long-term solution is keeping radon out.

Keeping it out. Sealing cracks and other openings in the foundation is a basic radon reduction technique. Another method is soil suction—sucking the radon out of the soil before it enters the foundation or basement, and venting it into the air above the roof through a pipe. Increasing the air pressure within a house can also work, because radon enters houses when the air pressure inside is less than that of the surrounding soil. Equalizing the pressure in the basement or foundation reduces this pull.

The Landlord's Responsibility

Keeping radon out of your dwelling involves major expenditures and modifications to the building's structure. Obviously, this kind of work is your landlord's responsibility.

If your landlord is unaware of the radon issue, give the landlord a copy of the EPA booklet explaining it. (See "Radon Resources," below.) If you have grounds for concern—you notice radon detection devices in local stores, your neighborhood has several buildings that are vented for radon control or the geology of the area suggests the presence of uranium-rich soils—suggest that your landlord hire a testing firm. As always, if a group of tenants voice their concern, the landlord is more likely to pay attention than if you act alone. Obviously, if you perform a test, send the landlord a certified letter with a copy of the report.

Keep copies of letters, emails, and reports, and write a letter of understanding to the landlord summarizing any oral discussions of the issue. Meticulous business practices like these will impress your landlord with your seriousness and willingness to take legal action if necessary.

Radon Resources

For information on the detection and removal of radon, contact the U.S. Environmental Protection Agency (EPA) Radon Hotline at 800-767-7236 or visit the EPA website (www.epa.gov/radon). You can also download a copy of the booklet "A Radon Guide for Tenants" and other publications, including "Consumer's Guide to Radon Reduction." California's Department of Public Health has lots of information—go to their website at www.cdph.ca.gov and type "radon" into the search box.

Move Out If Necessary

Unacceptably high levels of radon render a home unfit for habitation. If a certified tester has reached that conclusion, you have all that you need to demand that the landlord take prompt steps to remedy the problem. If the landlord fails to address it within a very short time, you can break your lease or month-to-month rental agreement and move out, citing a breach of the implied warranty of habitability (see Chapter 6). Your suspicion alone that radon is present (perhaps because your neighbor has a radon problem) will probably not protect you if the landlord sues you for unpaid rent.

It may be appropriate to move out temporarily if the landlord plans to install pumps or vents, which may take some time. See the discussion above that suggests strategies for recouping expenses of temporary housing.

Carbon Monoxide

Carbon monoxide (CO) is a colorless, odorless, lethal gas. Unlike radon, whose deadly effects work over time, CO can build up and kill within a matter of hours. And, unlike any of the environmental hazards discussed so far, CO cannot be covered up or managed.

When CO is inhaled, it enters the bloodstream and replaces oxygen. Dizziness, nausea, confusion, and tiredness can result; high concentrations bring on unconsciousness, brain damage, and death. It is possible to be poisoned from CO while you sleep, without waking up.

Sources of Carbon Monoxide

Carbon monoxide is a byproduct of fuel combustion; electric appliances cannot produce it. Common home appliances, such as gas dryers, stoves, and ovens; refrigerators, ranges, water heaters or space heaters; oil furnaces, fireplaces, charcoal grills, and wood stoves all produce CO. Automobiles and gas gardening equipment also produce CO. If appliances or fireplaces are not vented properly, CO can build up within a home and poison the occupants. In tight, "energy-efficient" apartments, indoor accumulations are especially dangerous. No state or federal agency has issued guidelines on permissible exposures.

CAUTION

If you smell gas, it's not CO. Carbon monoxide has no smell. Only a CO detector will alert you to its presence. To help identify leaking natural gas, utility companies add a smelly ingredient; when you "smell gas," you are smelling that additive. Because natural gas is so combustible, call the utility company or 911 immediately if you smell it.

Preventing Carbon Monoxide Problems

If your landlord has a regular maintenance program, it should prevent the common malfunctions that cause CO build-up. But even the most careful service program cannot rule out unexpected problems like the blocking of a chimney by a bird's nest or the sudden failure of a machine part.

Fortunately, relatively inexpensive devices, similar to smoke detectors, can monitor CO levels and sound an alarm if they get too high, and state law (H&S §§ 17916 and 17926.1) requires that landlords install a carbon monoxide device approved and listed by the State Fire Marshal.

CAUTION

If your CO detector sounds an alarm, leave immediately and do a household head count. Since one of the effects of CO poisoning is confusion and disorientation, get everyone out immediately—then check for signs of poisoning and call the fire department or 911.

Responsibility for Carbon Monoxide

Most CO hazards are caused by a malfunctioning appliance or a clogged vent, flue, or chimney. It follows that the responsibility for preventing a CO buildup depends on who is responsible for the upkeep of the appliance.

Appliances. Appliances that are part of the rental, especially built-in units, are typically the responsibility of the landlord, although you are responsible for intentional or unreasonably careless damage. For example, if the pilot light on the gas stove that came with the rental is improperly calibrated and emits high amounts of CO, the landlord is responsible for fixing it. On the other hand, if you bring in a portable oil space heater that malfunctions, that is your responsibility.

Vents. Vents, chimneys, and flues are part of the structure, and the landlord typically handles their

maintenance. In single-family houses, however, it is not unusual for landlord and tenant to agree to shift maintenance responsibility to the tenant.

Sample Letter Asking for Check of CO Detector

34 Maple Avenue North, #3
Mountain Town, CA 00000
303-555-1234

February 14, 20xx

Cindy Cerene
1818 East Seventh Street
Mountain Town, CA 00000

Dear Ms. Cerene:

The kitchen in the apartment we rent from you has a gas stove and cook-top, which are about 15 years old, and there is a gas furnace in the hallway. These appliances appear to be working normally, but especially in the winter, when storm windows make the house airtight, I am concerned about the possible buildup of carbon monoxide. I would like you to check the CO detector in the hallway near the bedrooms.

As you know, CO is a deadly gas that can kill within hours. We can't see it or smell it, and it could accumulate and poison us during the night. The only way to protect ourselves (besides your regular maintenance of these appliances) is with a detector. I am concerned that the CO detector is not functioning, so please check it as soon as possible.

Thanks very much for your consideration of this matter.

Yours truly,

Brian O'Rourke
Brian O'Rourke

If you have or suspect a CO problem that can be traced to the landlord's faulty maintenance, promptly request that the landlord fix it. If you are poisoned because your landlord failed to routinely maintain the appliances or to respond promptly to your repair request, the landlord will have a difficult time avoiding legal responsibility. (See Chapter 9.) To motivate your landlord to fix the CO-spewing gas dryer, it might be sufficient to subtly point out that failure to do so could cause a tragedy—and a lawsuit.

A sample letter bringing a CO problem to the landlord's attention is shown above. If you write such a letter, you would be smart to hand-deliver it to your landlord or manager, since the problem needs immediate attention. And in the meantime, don't use the appliance you suspect of causing the problem.

Carbon Monoxide Resources

The EPA website offers useful instructional material, including downloadable educational pamphlets, at www.epa.gov.indoor-air-quality-iaq. Local natural gas utility companies often have consumer information brochures available to their customers. You can also check out the American Gas Association website www.aga.org for consumer pamphlets on carbon monoxide. The Chimney Safety Institute of America, in Plainfield, Illinois (317-837-5362), publishes brochures on carbon monoxide and chimney safety. For more information, visit their website at www.csia.org.

Mold

Mold is the newest environmental hazard causing concern among renters. Across the country, tenants have won multimillion-dollar cases against landlords for significant health problems—such as rashes, chronic fatigue, nausea, cognitive losses, hemorrhaging, and asthma—allegedly caused by exposure to "toxic molds" in their building.

Mold is also among the most controversial of environmental hazards now in the news. There is considerable debate within the scientific and medical community about which molds, and what situations, pose serious health risks to people in their homes. Unlike lead, for example, where lead levels in blood

can be accurately measured (and their effects scientifically predicted), mold is elusive. There is no debate, however, that mold can cause respiratory ailments. This is especially true for vulnerable populations such as people who have asthma or suppressed immune systems (including AIDS or cancer patients receiving chemotherapy). People with allergies, young children, and the elderly are also vulnerable.

Where Mold Is Found

Mold comes in various colors and shapes. The villains—with names like stachybotrys, penicillium, aspergillus, paecilomyces, and fusarium—are black, white, green, or gray. Some are powdery, others shiny. Some molds look and smell disgusting; others are barely seen—hidden between walls, under floors and ceilings, or in less accessible spots such as basements and attics.

Mold often grows on water-soaked materials, such as wall paneling, paint, fabric, ceiling tiles, newspapers, or cardboard boxes. However, all that's really needed is an organic food source, water, and time. Throw in a little warmth and the organism will grow very quickly, sometimes spreading within 24 hours.

Humidity sets up prime growing conditions for mold. Buildings in naturally humid climates have experienced more mold problems than residences in drier climates. But mold can grow irrespective of the natural climate, as long as moisture is present. Here's how:

- Floods, leaking pipes, windows, or roofs may introduce moisture that will lead to mold growth in any structure—in fact, these are the leading causes of mold.
- Tightly sealed buildings (common with new construction) may trap mold-producing moisture inside.
- Overcrowding, poor ventilation, numerous over-watered houseplants, and poor housekeeping may also contribute to the spread of mold.

Unsightly as it may be, not all mold is harmful to your health. It takes an expert to know whether a particular mold is harmful or just annoying. Your first response to discovering mold shouldn't be to demand that the landlord call in the folks with the white suits and ventilators. Most of the time, proper cleanup and maintenance will remove mold. Better yet, focus on early detection and prevention of mold, as discussed below.

Laws on Mold Affecting Landlords

Unlike other environmental hazards such as lead, landlord responsibilities regarding mold have not been clearly spelled out in building codes, ordinances, statutes, and regulations. The main reason for the lack of standards is that the problem has only recently been acknowledged. California has been at the leading edge in trying to get a handle on the problem, as explained below.

Federal Law

No federal law sets permissible exposure limits or building tolerance standards for mold in residential properties.

State Law

California was the first state to take steps toward establishing permissible mold standards. The Toxic Mold Protection Act of 2001 authorizes the California Department of Public Health (CDPH) to adopt, if feasible, permissible exposure levels (PELs) for indoor mold for sensitive populations, such as children and people with compromised immune systems or respiratory problems. If this is not feasible, the CDPH may develop guidelines for determining when the presence of mold is a health threat. In addition, the CDPH will develop identification and remediation standards, which will guide contractors, owners, and landlords in how to inspect for mold and safely remove it. California's new law also requires landlords to disclose to current and prospective tenants the presence of any known or suspected mold. (H&S §§ 26100 and following.) (See the CDPH website, given below in "Resources: Mold.")

Local Law

San Francisco has added mold to its list of nuisances, thereby allowing tenants to sue landlords under private and public nuisance laws if they fail to clean up serious outbreaks (San Francisco Health Code § 581).

Landlord Liability for Tenant Exposure to Mold

With little law on the specific subject of mold, you'll have to rely on your landlord's general responsibility to maintain and repair rental property (the subject of Chapter 6) for guidance. The landlord's legal duty to provide and maintain habitable premises naturally extends to fixing leaking pipes, windows, and roofs—the causes of most mold. If the landlord doesn't take care of leaks and mold grows as a result, you may be able to hold the landlord responsible if you can convince a judge or jury that the mold has caused a health problem. Your position, legally, is really no different from what happens when the landlord fails to deal with any health or safety hazard on the property. For example, if the owner knows about (but fails to fix) a loose step, the owner will foot the bill if someone is injured as a result of tripping on the step.

Landlords often attempt to shift responsibility for a mold problem onto a tenant. This may or may not be justified. If the property does not have adequate ventilation, that is a habitability issue that the landlord is responsible for. (H&S § 17920.3(a).) On the other hand, the tenant would be responsible if he failed to use the working fan in the shower room and mold appeared as a result.

Prevention—The Best Way to Avoid Mold Problems

A smart landlord's efforts should be directed squarely at preventing the conditions that lead to the growth of mold—and you should be the landlord's partner in this effort. This approach requires maintaining the structural integrity of the property (the roof, plumbing, and windows), which is the landlord's job. You, in turn, need to follow some practical steps and promptly report problems that need the landlord's attention.

The following steps are especially important if you live in a humid environment or have spotted mold problems in the past:

- **Check over the premises and note any mold problems; ask the landlord to fix them before you move in.** Fill out the Landlord-Tenant Checklist form in the appendix and follow the advice on inspecting rental property at the start of a tenancy.
- **Understand the risks of poor housekeeping practices and recognize the factors that contribute to the growth of mold.** In particular, be sure you know how to:
  - ventilate the rental unit
  - avoid creating areas of standing water—for example, by emptying saucers under houseplants, and
  - clean vulnerable areas, such as bathrooms, with cleaning solutions that will discourage the growth of mold.

The EPA website, in "Resources: Mold," below, includes lots of practical tips for discouraging the appearance of mold in residential settings.

- **Immediately report specific signs of mold, or conditions that may lead to mold, such as plumbing leaks and weatherproofing problems.**
- **Ask for all repairs and maintenance needed to clean up or reduce mold—for example:**
  - Request exhaust fans in rooms with high humidity (bathrooms, kitchens, and service porches), especially if window ventilation is poor in these areas.
  - Ask for dehumidifiers in chronically damp climates.
  - Reduce the amount of window condensation by using storm windows, if they're available.

These preventive steps will do more than decrease the chances that mold will begin to grow. If you have asked for them in writing and included the underlying reason for the request, you'll have good

evidence to show a judge if a landlord refuses to step forward and your possessions are damaged or you are made ill by the persistence of the problem.

> **EXAMPLE:** The closet in Jay's bedroom begins to sprout mold along the walls and ceiling. Jay asks his landlord, Sam, to address the problem (Jay suspects that the roof is leaking). Sam refuses, and Jay begins to feel sick; his clothes and shoes are also ruined by the mold. When Jay sues Sam for the value of his ruined possessions, he shows the judge the written requests for repairs that Sam ignored. After showing the judge photos and an impressively moldy pair of shoes, Jay wins his case. He consults an attorney before pursuing a lawsuit based on his physical reactions to the mold.

How to Clean Up Mold

Although reports of mold sightings are alarming, the fact is that most mold is relatively harmless and easily dealt with. Some problems, like those caused by leaks, will not go away until after the landlord has dealt with the cause of the leak. Even then, there may be mold on the interior sheetrock that emits a smell. Sometimes, however, the problem is a minor one. If you think that you have a relatively minor and non-recurring mold problem, you can probably take care of it yourself.

Most of the time, a weak bleach solution (one cup of bleach per gallon of water—do not use undiluted bleach) will remove mold from nonporous materials. You should follow these commonsense steps to clean up mold if the job is small. Use gloves and avoid exposing eyes and lungs to airborne mold dust (if you disturb mold and cause it to enter the air, use masks). Allow for frequent work breaks in areas with plenty of fresh air.

- Clean or remove all infested areas, such as a bathroom or closet wall. Begin work on a small patch and watch to see if you develop adverse health reactions, such as nausea or headaches. If so, stop and contact the landlord, who will need to call in the professionals.
- Don't try removing mold from fabrics such as towels, linens, drapes, carpets, and clothing—you'll have to dispose of these items.
- Contain the work space by using plastic sheeting and enclosing debris in plastic bags.

(For more information, check out the sites noted in "Resources: Mold," below.)

CAUTION

People with respiratory problems, fragile health, or compromised immune systems should not participate in cleanup activities. If you have health concerns, ask for cleanup assistance. You may want to gently remind your landlord that it's a lot cheaper than responding to a lawsuit.

When the Landlord Won't Address a Serious Mold Problem

Some mold problems are longstanding or have caused substantial damage to the unit—or both. This usually happens when mold has grown inside a wall because of leaks from outside or from interior plumbing; or because of condensation caused by inadequate insulation. These problems can be complicated to address because the water source is not easy to identify or mold is hidden from view—or both. Unfortunately, many landlords do not view these problems as serious ones that demand extra attention on their part. Many times, they will cut corners to avoid the extra expense of thorough water detection or proper mold remediation.

It is essential that you continue to notify the landlord of leaks, condensation, visible mold, or a moldy smell, and describe any impact that it may be having on your family's health. If you have done testing and found that the type of mold you have is particularly dangerous (see below), provide the landlord with the test results. Ask your landlord to have an assessment done by a professional mold inspector, one who will prepare a plan to remediate the mold, and ask the landlord for a copy of the inspector's report (however, landlords are not required to give it to you).

Resources: Mold

For information on the detection, removal, and prevention of mold, see the EPA website at www.epa.gov/mold. Publications with the homeowner in mind are available from the California Department of Public Health at www.cdph.ca.gov.

Testing for mold is costly—often $1,000 or more for a single family home. However, if you have a serious problem and it is having a health impact on your family, then it's probably money well spent. The tester should, at a minimum, be a certified mold inspector, but preferably an environmental engineer or an industrial hygienist. Of course, the more expertise, the greater the cost, but if you are contemplating a lawsuit, the better expert will probably help your case more. The expert will probably inspect the property to determine the potential causes of the mold and will likely do air testing to see how much mold you are breathing and what kind of mold it is. Your expert will give you an idea of the extent of mold contamination and what it will take to remediate it. You should also ask about what you and your family can do to protect yourselves.

Many people report that when they are out of the environment, let's say for a week's vacation, their physical symptoms improve; and when they come back, they get worse again. This is also a good indicator of how severe the mold problem is. Conversely, if you don't get any better when you are away for a while, that's probably a good indicator that the cause of your symptoms is something other than the mold in your apartment.

Your repair and deduct remedy (discussed in Chapter 6) is probably available if you identify the source of the moisture problem and that problem is one of those enumerated in Civil Code Section 1941.1 or 17920.3 (which it probably is). It is much riskier to deduct the costs of mold removal, and it is not recommended.

In a rent control jurisdiction, you may also be able to file a petition to have your rent reduced due to a reduction in services (maintenance and repair).

Insurance Coverage for Mold Damage

If your possessions have been ruined by mold and must be replaced, ask your landlord to cover the costs of replacing your damaged items. Also contact your renters' insurance agent immediately. Your renters' insurance may cover the cost of replacement (unfortunately, most policies have severe limitations or exclusions for claims related to mold). Do not expect the policy to cover the costs of medical bills, however—you'll need to turn to your own health insurance for that (or, you can sue the landlord).

Bedbugs

Bedbugs live on human blood, and are wingless insects that are about one-quarter inch in length, oval but flattened from top to bottom. They're nearly white (after molting) and range to tan or deep brown or burnt orange (after they've sipped some blood, a dark red mass appears within the insect's body). They seek crevices and dark cracks, commonly hiding during the day and finding their hosts at night. Bedbugs nest in mattresses, bed frames, and adjacent furniture, though they can also infest an entire room or apartment. They easily spread from apartment to apartment via cracks in the walls, heating systems, and other openings.

Relatively scarce during the latter part of the 20th century, bedbug populations have resurged recently in Europe, North America, and Australia, possibly a result of the banning of effective but toxic pesticides such as DDT. Bedbugs do not carry disease-causing germs (perhaps their one saving feature). Bedbugs are expert stowaways, crawling into luggage, clothing, pillows, boxes, and furniture as these items are moved from an infested home or hotel to another location. Secondhand furniture is a common source of infestation.

You may not be able to see bedbugs, but you are likely to feel their bites when you wake up in the morning (if they don't wake you up during the night). Their bites are about 1/8 inch in diameter or bigger and often turn into welts, often with visible blood at the top of the mound. Many people report itching from the bites, while others hardly feel them at all. You may also see blood on your sheets, another sign that bedbugs are likely in your unit. For more information on identifying bedbugs, go to the California Department of Public Health Website www.cdph.ca.gov/HealthInfo/discond/Documents/Bedbugs2010.pdf.

Getting rid of bedbugs is more difficult than you might expect, so be prepared to do more than you would normally expect to. The standard of care is to hire a professional pest control company, who will make multiple visits to the property, prepare your room or unit for treatment, and employ other measures, depending on the circumstances. Guidelines for the control and prevention of bedbugs can be found at the California Department of Public Health Website; www.cdph.ca.gov/Health Info/discond/Documents/BedBugGuidelines.pdf.

Bed bug problems can get out of control very quickly, so it is important to take immediate action.

How to Deal With an Infestation

You'll learn that bedbugs have infested your home when you experience widespread, annoying bites that appear during the night. To minimize the outbreak and attempt to stop the spread of the pests to other rental units, your landlord must take the following steps immediately. You, too, must cooperate by cleaning and decluttering. If your landlord refuses to effectively deal with the infestation, you may have grounds to move out (because the rental has become uninhabitable). Understand that, unlike some other pest problems, dealing with bedbugs requires building-wide attention, which means that you must have your landlord's active involvement. Moreover, hiring an experienced pest control operator is the only way to deal with a bedbug infestation. A can of Raid is not going to do the job.

Confirm the Infestation

First, you and the landlord must make sure that you're in fact dealing with bedbugs and not some other pest, such as fleas. If you're not sure, submit your catch to a competent entomologist (insect specialist) for evaluation.

It is best to try to capture a critter or two, that way the landlord cannot deny that there is a bedbug problem. Go online and check to see if what you have looks like any of the photos of bedbugs you see on your computer screen. You can often find bedbugs at the underside of your mattress or box spring (especially in corners and under folds). Short of capturing a bedbug, you can show your landlord the bites on your body or the blood on your mattress. Just reporting the bedbug bites should alert your landlord to the problem (if he hasn't already heard it from another tenant).

If the landlord is doing his job properly, he will hire a licensed pest control service to investigate the problem and recommend appropriate action.

Inspection by a Licensed Pest Control Operator

In a multiunit building, bedbugs can travel from one unit to another, leading to the nightmare of an entirely infested building. But chances are that one unit is the original source (and it will likely have the highest concentrations of bedbugs).

Pest Control Operators (PCOs) should, at a minimum, carefully inspect all units above, below, and to each side of any unit that has reported bedbugs. They should also check nearby common areas, like hall carpets. The should look at seams and joints of mattresses, bed frames, baseboards, cracks, picture frames, as well as upholstered furniture. Even with careful inspection, actually finding bedbugs is often difficult; you can help by telling the exterminator where you have seen bedbugs and how you think the bedbugs have gotten into your unit. Your landlord should give all tenants proper notice of the inspection beforehand.

After inspection, the PCO should develop a treatment plan for eradicating the bedbugs and preventing them from coming back. If the infestation is significant, the plan should include treatment of affected *and* adjacent units. This involves spraying chemicals in each unit, which will kill the bugs. PCOs usually apply three of these "treatments," approximately two weeks apart. The PCO should give the landlord, and the landlord should give you, the date for each treatment and instructions as to how to get your unit ready for the treatment. It is essential that you follow these instructions.

Bag the Bed

Bedbugs will always be found in an infested room's bed. The only way to rid a mattress of bedbugs is to enclose it in a bag that will prevent bugs from chewing their way out (they will eventually die inside). Use a bag guaranteed to trap bedbugs (some bags will simply deter allergens). See the articles from the California Department of Public Health, above, for more information on bed bags.

Declutter, Leave, Exterminate, Vacuum—And Do It Again

Bedbugs thrive in clutter, which simply gives them more hiding places. To effectively deal with the bugs, tenants in infested units must first remove clutter and neaten up. You must remove all items from closets, shelves, and drawers; and wash all bedding and clothing (putting washed items in sealed plastic bags). You need to leave your unit during treatment, and return when the exterminator gives the all clear. Most of the time, tenants can return the same day.

Upon return, you must thoroughly vacuum. Experienced exterminators will recommend a second and even a third treatment, with exhaustive cleaning and clutter-removing in between.

Infested items that can't be treated must be destroyed. Don't simply remove infested items and bring them back! Use extreme care when removing infested belongings and furniture. Bag them in plastic before carting them away—otherwise, you may inadvertently distribute the bugs to the rest of the building.

Exterminations and Relocation Costs: Who Pays?

In keeping with their obligation to provide fit and habitable housing, landlords must pay to exterminate pests that tenants have not introduced. Eradicating infestations caused by the tenant, however, can rightly be put on the tenant's tab. But determining who introduced the bedbugs is often very difficult.

Bedbugs in Multifamily Buildings

In a multiunit building, if the landlord approaches a bedbug problem by "boxing" the building as explained above, it may be able to identify the most infested rental unit. But identifying the source (or most infested) unit is not the same as proving that these tenants caused the problem. For example, suppose management traces the infestation to Unit 2, whose occupant moved into the building a few weeks ago. Serial mapping may show that adjoining Units 1 and 3 became infested after Unit 2 did, thereby suggesting that tenants in Units 1 and 3 were not responsible for their infestations. Suppose the tenant in the source unit (Unit 2) argues that the former occupants introduced the bedbug eggs that conveniently hatched after their departure. How will a landlord disprove this? Perhaps the landlord will discover that the new tenant came from a building that was also infested, but lacking this, the owner will have a hard time laying responsibility on the new resident. And even if the landlord did a thorough inspection of the unit before rerenting, there's no guarantee that they didn't miss some miniscule eggs.

If mapping identifies a source unit that's occupied by a long-term resident, it will be similarly difficult

to develop the facts needed to prove that this tenant introduced the bugs. How will the landlord learn about its tenants' habits, purchases, and travels, short of a full-blown lawsuit? And even if management discovers, for example, that these tenants bought a secondhand couch recently, how will they prove it contained bedbugs? Or that bugs came home with them following their recent stay in a hotel, or travel abroad?

In short, because of the practical difficulty of identifying the tenant who introduced the bugs, the landlord often ends up footing the bill for extermination and relocation costs.

Proper Cleaning and Housekeeping for Bedbugs

As you know from reading about your right to privacy, landlords must maintain a delicate balance between insisting that tenants take proper care of their property, and respecting their privacy. Landlords can require that rental units be kept in a sanitary condition, but they can't inspect every week to make sure their tenants' housekeeping efforts are adequate.

When it comes to effectively eliminating bedbugs, however, extreme housekeeping is needed. Most tenants are so grateful that their landlord is taking steps to deal with the bugs that they cooperate voluntarily. This is not the time to balk at inspections and regular treatments. Failure to cooperate will not only defeat the eradication efforts, it will destroy any chance you might have at compensation.

Bedbugs in Single-Family Rentals

Tenants of single-family rentals face a simpler picture when it comes to determining who's responsible for an infestation, because there's no issue of boxing the infestation and determining the source. If you are a long-term tenant who reports a problem, chances are it's a result of your activities; but tenants who have just moved in may argue that the former residents introduced the eggs.

Ruined Belongings: Who Pays?

In many cases, bedbugs infest both the rental and its contents—books, clothes, furniture, appliances. One New York landlord reported getting a phone call from his tenant who discovered bedbugs and moved out with only the clothes on his back, leaving everything—everything—behind. This tenant sued the owner for the replacement cost of his belongings, claiming that the landlord's ineffective eradication methods left him no choice. Who pays?

A landlord has a duty at law to maintain the premises free of pests. That includes bedbugs. The landlord is responsible for bedbug infestation if he fails to respond quickly and properly when bedbugs are reported. Landlords often try to shift the blame to their tenants, saying the tenants brought the bedbugs in, but this is almost impossible to prove. If the landlord does not take action, he is on the hook. Nevertheless, tenants also have responsibilities as well, most notably to allow access for inspection and to follow the instructions of the PCO. A tenant's failure in these regards will undermine his claim for damages.

Will Insurance Step Up for Bedbugs?

If you're facing a bedbug problem, you'll want to know whether your landlord's insurance policy or your own renter's policy will help you with the cost of replacing ruined belongings and related expenses. Here's the scoop:

Tenants' claims against the landlord's policy for lost or damaged belongings, medical expenses, and related moving and living expenses. Your landlord's commercial general liability policy will probably cover your claims here, although many policies have exclusions for pests.

Tenants' claims against their renters' insurance policies. If you have renters' insurance, you may get some help here. If you are at fault (you introduced the bugs), the liability portion of your policy should cover you, in the same way that it will cover you when you do other negligent things, such as failing

to warn a guest about a wet floor, causing a slip and injury. If another tenant caused the infestation, you can still make a claim on your policy (your carrier may turn around and sue the responsible tenant, but that's their problem, not yours). (See Chapter 16 for a discussion of renters' insurance.)

Breaking a Lease for a Bedbug-Infested Rental

Most landlords will not tell prospective tenants about a past bedbug problem. Knowing that a bedbug can remain alive and dormant for over a year, and that eradication attempts are often not 100% effective, many prospects will never consider living in a unit that has experienced a bedbug problem, even when the landlord has done everything possible to deal with the bugs. Some landlords believe that disclosing a rental's bedbug past will make it unrentable, period.

Still, because a landlord is required to disclose whether a PCO has entered into a contract with the landlord to apply pesticides at the property (and give specifics as to the pest targeted and the chemicals used), you should learn of the problem when reading this disclosure. (Because the duty is to disclose to "new tenants," you may not get it until you've signed the lease or rental agreement.) (CC § 1940.8.)

If a landlord knowingly withheld material facts (such as the presence of bedbugs), or has rendered the premises uninhabitable due to a persistent bedbug infestation that has not been successfully addressed (no matter how hard the landlord might have tried), the tenant has a basis for terminating the lease agreement and just moving out. (CC § 1689(b)(1).) Furthermore, you may be able to argue that the landlord committed fraud by withholding material facts about your tenancy. (CC §§ 1592, 1573.)

In addition to breaking the lease, you may be able to file a lawsuit for damages against your landlord. If you live in a building with other units where the tenants were also affected, you may want to go in together on a lawsuit against your landlord. Again, your landlord's liability is not automatic. However, if the landlord did not do a proper job eradicating the bedbugs, or if, before you moved in, the landlord withheld facts about the presence of bedbugs at the building, you may have grounds to sue. You may be entitled to compensation for lost property; out-of-pocket costs, including relocation expenses and medical expenses; and physical, mental, and emotional suffering.

Electromagnetic Fields

Power lines, electrical wiring, and appliances emit low-level electric and magnetic fields. The farther away you are from the source of these fields, the weaker their force.

The controversy surrounding electromagnetic fields (EMFs) concerns whether or not exposure to them increases a person's chances of getting certain cancers—specifically, childhood leukemia. Although some early research raised the possibility of a link, later scientific studies have discounted it. See, for example, the exhaustive research done by the World Health Organization on the health consequences of EMFs, available at www.who.int/peh-emf/about/en.

Since the landlord cannot insist that the power companies move their transmitters or block the emissions, the landlord is not responsible for EMFs or their effect—if any—on you. If you're worried, your only practical option is to move. If you have a month-to-month rental agreement or the lease is up, you can easily move on without legal repercussions. But what if you decide midlease that the EMFs are intolerable? Legally, you would be justified in breaking a lease or rental agreement only if the property presents a significant threat to your health or safety. (Breaking a lease when the property is unfit is explained at length in Chapter 6.) Given the professional debate regarding the danger from EMFs, it is unclear whether a court would decide that their presence makes the property unlivable.

The National Institute of Environmental Health Sciences has useful resources on EMFs. To find these, simply do a search on their website at www.niehs.nih.gov.

CHAPTER

11

Crime on the Premises

Your landlord has some degree of legal responsibility to provide secure housing. This means the landlord must take reasonable steps to:

- protect tenants from would-be assailants, thieves, and other criminals
- protect tenants from the criminal acts of fellow tenants
- warn tenants about dangerous situations they are aware of but cannot eliminate, and
- protect the neighborhood from their tenants' illegal and noxious activities, such as drug dealing.

When landlords don't live up to this responsibility, they may be liable for any injuries or losses that befall you as a result. This chapter explores the security measures that you can legally expect from your landlord—and how to insist on them if your landlord doesn't do enough to safeguard tenants.

The Landlord's Basic Duty to Keep You Safe

State law requires landlords to take reasonable precautions to protect tenants from foreseeable harm. You can't expect your landlord to eliminate crime in your city or to provide an army of armed security. On the other hand, the landlord can't just turn over the keys, trusting to the local constable and fate to assure your safety.

State Laws

State and local building and housing codes are rich with specific rules designed to protect tenants. State law requires deadbolt locks on main exterior doors (except for sliding doors), common area doors, and gates and certain windows. (CC § 1941.3.) The law requires the following:

- Deadbolt lock that is at least 13/16 inch long for each main entry door. A thumb-turn lock in place on July 1, 1998, will satisfy the requirement, but a 13/16th of an inch deadbolt must be installed when the landlord repairs or replaces the lock. If there are other kinds of locking mechanisms used instead of a deadbolt, they must be inspected and approved by a state or local agency.
- Locks that comply with state or local fire and safety codes in existing doors or gates that connect common areas (such as lobbies, patios, and walkways) to rental units or to areas beyond the property (such as a main front door).
- Window locks on louvered and casement windows. Prefabricated windows with their own opening and locking mechanisms are exempt, as are those that are more than 12 feet above the ground. However, a window that is over 12 feet from the ground but less than six feet from a roof or any other platform must have a lock.

If you are the victim of domestic violence, sexual assault, or stalking, you may be entitled to additional protections under Civil Code Sections 1940.6 or 1940.7. (See Chapter 2.)

Local Ordinances

Many counties and cities have adopted housing codes designed to minimize the chances of a criminal incident on residential rental property—for example, by requiring peepholes. If your landlord does not comply with specific equipment requirements, you can complain to the agency in charge of enforcing the codes, often a local building or housing authority. (See below.)

If you are injured when a criminal takes advantage of your landlord's violation of a safety law—for example, an intruder enters your apartment building by way of a lock that's been broken for weeks—the landlord may be liable for your injuries.

RESOURCE

To get a copy of your local housing code or ordinance, call your city manager's or mayor's office, or look it up at your local public library. You may be

able to get information from a local housing agency or local tenants' association. Many counties and cities have posted their ordinances online. Go to www.statelocalgov.net/state-ca.cfm and search for your county or city.

The Landlord's General Responsibility

In addition to complying with local and state laws that require basic security measures, landlords have a general common law duty to act reasonably under the circumstances—or, expressed in legal jargon, to "act with due care." (See Chapter 10 on your landlord's duty to keep you safe from noncriminal harm.) For example, common areas must be kept clean and safe, so that they do not create a risk of accidents. When it comes to security, too, California judges have ruled that landlords must take reasonable precautions to protect tenants from foreseeable criminal assaults and property crimes.

The meaning of "reasonable precautions" depends on the situation. In general, courts will look at the connection between the failure to provide proper security and how likely it was that the tenant would be injured because of the lack of security. For instance, the cost of replacing a broken door is minimal, but, especially in a high crime area, the foreseeability of a burglar gaining entry through the broken door is great. So, fixing the door is a reasonable precaution that the landlord should have undertaken. On the other hand, courts will require greater foreseeability if the cost for protection is greater. For instance, before requiring a landlord to hire security guards, one must show a likelihood greater than the threat of intrusion that a crime would be committed—which is usually accomplished by showing prior criminal acts on the premises.

If you have a security concern, it's important to notify your landlord immediately. That way he can't complain that he didn't know about the problem.

Unfortunately, a landlord's responsibility in this area is not black or white. The questions below should assist you in evaluating your landlord's duty.

Did your landlord control the area where the crime occurred?

Your landlord isn't expected to police the entire world. For example, a lobby, hallway, or other common area is an area of high landlord control. However, the landlord exerts no control over the sidewalk outside the front door.

How likely is it that a crime would occur?

Landlords are duty-bound to respond to the foreseeable, not the improbable. Have there been prior criminal incidents on the rental property? Elsewhere in the neighborhood? A landlord who knows that an offense is likely (because of a rash of break-ins or prior crime on the property) has a heightened legal responsibility to guard against future crime.

How difficult or expensive would it have been for the landlord to reduce the risk of crime?

If relatively cheap or simple measures could significantly lower the risk of crime, it is likely that a court would find that your landlord had a duty to undertake them, especially in an area where criminal activity is high. For instance, would reasonably inexpensive new locks and better lighting discourage thieves? However, if the only solution to the problem is costly, such as structural remodeling or hiring a full-time doorman, a court would be less likely to impose these costs on your landlord unless the danger is very great.

How serious an injury was likely to result from the crime?

Most cases involving serious injuries such as instances of aggravated assault, sexual assault, or homicide, will focus on the duty of the landlord. Where the victim claims that the landlord should have implemented additional security measures, such as hiring security guards, the more he or she will have to show that the property owner knew of the likelihood of such violent criminal activity. In one case, a mobile home park tenant was shot

by a stray bullet, fired in a confrontation between rival gangs. The Supreme Court held that the mobile home park owner had no duty to evict gang members, install additional lighting, or hire security guards, even though gang members had been reported harassing other tenants, possibly breaking a car window, and other low-level troublesome behavior. This behavior did not make injury from gun activity likely. (*Castenada v. Olsher,* 41 Cal.4th 1205, (2007).) By contrast, in *Vasquez v. Residential Investments, Inc.*, 118 Cal.App.4th 269 (2004), the court held a landlord liable for the murder of one of his tenants when the landlord failed to repair the front door, allowing the tenant's boyfriend to enter and kill her. It reasoned that the landlord was legally responsible for repairing the door and the cost to repair it was minimal. At the same time, the risk of a criminal intruder was foreseeable.

Let's look at how these questions might be answered in three crime situations.

EXAMPLE 1: Sam was accosted outside the entryway to his duplex by a stranger who was lurking in the tall, overgrown bushes in the front yard next to the sidewalk. There had been many previous assaults in the building. Both the bushes and the lack of exterior floodlights near the entryway prevented Sam from seeing his assailant until it was too late. If Sam filed a claim with the landlord's liability insurance company or sued the landlord, an adjuster or judge would probably conclude that the landlord was bound to take measures to protect Sam's safety, because:

1. The landlord controlled the common areas outside the duplex.
2. It was foreseeable that an assailant would lurk in the bushes and that another assault would occur.
3. The burden of trimming the shrubbery and installing lights was small in comparison to the risk of injury.

EXAMPLE 2: Caroline was assaulted in the house she rented by someone whom she let in, thinking that he was a gas company repairperson. There was a peephole in the front door, as required by local law, which she could have used had she asked to see proof of his identification. When Caroline sued her landlord, the judge tossed the case out. Her case collapsed on question 1: The landlord had no control over Caroline foolishly opening the door to someone whom she could have safely questioned (and excluded) from inside.

EXAMPLE 3: Max was assaulted and robbed in the open parking lot next to his apartment house when he came home from work late one night. The landlord knew that several muggings had recently been reported in the neighborhood, and he knew that his tenants parked there (he even mentioned the "free parking" when showing the rentals). Floodlights lighted the parking lot, but it was not fenced and gated. Here's how the questions might be answered:

1. The landlord didn't own the lot, yet he knowingly benefited from his tenants' use of it. A judge might conclude that he had control, at least as far as warning tenants not to use the lot.
2. An assault seemed reasonably foreseeable in view of the recent nearby muggings.
3. However, the burden of totally eliminating the danger (fencing the lot) would have been very expensive.

When Max sued, the case turned on whether the landlord's duty of care toward his tenants extended to their use of property that he did not own but benefited from. The judge has not announced his decision.

If, based on these questions, you think the landlord had a legal duty to deal with a condition on the premises that exposed you to the risk of crime, keep going. You have two more questions to answer.

Did your landlord fail to take reasonable steps to prevent a crime?

As ever, "reasonableness" is evaluated within the context of each situation. For example, returning to Sam (Example 1, above), the fact that the landlord let the bushes grow high and didn't replace the

lights clearly was unreasonable. But suppose the landlord had cut the bushes back halfway and installed one light. Would that have been enough? It would be up to a jury to decide.

The greater the danger, the more a landlord must do. Past criminal activity on the premises increases your landlord's duty to keep you safe. "Reasonable precautions" in a crime-free neighborhood are not the same as those called for when three apartments in the landlord's building have been burglarized within the past month.

> **EXAMPLE:** Allison rented an apartment in Manor Arms after being shown the building by the resident manager. Nothing was said about recent criminal activity in the building. A month after moving in, Allison was assaulted by a man who stopped her in the hallway, claiming to be a building inspector. Unbeknownst to Allison, similar assaults had occurred in the building in the past six months, and the manager even had a composite drawing of the suspect done by the local police. Allison's assailant was captured and proved to be the person responsible for the earlier crimes.
>
> Allison sued the building owners after their insurance carrier refused to offer her a reasonable settlement. In her lawsuit, Allison claimed that the owners were negligent (unreasonably careless) in failing to warn her of the specific danger posed by the repeat assailant and in failing to beef up their security (such as hiring a guard service) after the first assault. The jury agreed and awarded Allison a large sum of money.

Landlords cannot eliminate all danger to tenants. In some situations, it may be enough to warn you. Just as caution tape and warning cones alert tenants to a freshly washed floor, you can expect your landlord to warn you about possible criminal problems by using:

- newsletters that remind tenants to be on the alert and use good sense
- letters that communicate specific information, such as a physical description of an assailant who has struck nearby, and
- signs that remind tenants to use the building's safety features, such as a notice posted in the lobby asking tenants to securely lock the front door behind them.

Did your landlord's failure to take reasonable steps to keep you safe contribute to the crime?

You must be able to connect the landlord's failure to provide reasonable security with the criminal incident. It is often very difficult for tenants to convince a jury that the landlord's failure to live up to his or her duty to keep you safe caused (or contributed to) the assault or burglary.

Think of it this way: If you fall because the rotten front step collapsed, you can usually trace the collapse directly to the landlord's failure to maintain the property. Now, suppose you can prove that the front door lock was broken (and had been for weeks) on the night you were assaulted. To hold the landlord liable, you have to be able to show that the assailant got into the building via that unlocked front door. This is where many lawsuits against landlords fall apart—the tenants can't connect the landlord's failure with the criminal's entry. You'd have to show that the landlord's failure to take reasonable measures was a substantial factor in the ability of the criminal to commit the crime.

If the jury decides that the landlord's failure to take reasonable measures was a substantial factor in the commission of the crime, both the landlord and the criminal are jointly and severally liable for all "economic" damages. Thus, the landlord is 100% on the hook for damages such as medical expenses, lost wages, and out-of-pocket expenses. As to "non-economic" damages such as pain, suffering, and psychological injuries, a jury will be required to apportion fault between the landlord and the criminal. For example, jurors might decide that the landlord is 60% at fault and the criminal 40%. In addition to economic damages, the landlord would have to pay 60% of the non-economic damages. Not surprisingly, victims rarely collect the criminal's share.

In Sam's case (Example 1, above), he convinced the jury that, had the bushes been properly trimmed and the area well-lit, he could have seen the assailant or, more likely, the assailant wouldn't have chosen this exposed place to commit a crime. The jury found that the landlord was 70% at fault for Sam's injuries.

The Landlord's Promises

A landlord who promises specific security features —such as a doorman, security patrols, interior cameras, or an alarm system—must either provide them or be liable (at least partially) for any criminal act that they would have prevented. Remember, your lease is a contract, and if it includes a "24-hour security" promise or a commitment to have a doorman on duty at night, you have a right to expect it. Even a landlord's oral descriptions of security bind the landlord if they were a factor that led you to rent the unit. You can often also rely on statements about security in advertisements.

Your landlord won't be liable for failing to provide what was promised, however, unless this failure caused or contributed to the crime. Burned-out lightbulbs in the parking lot won't mean anything if the burglar got in through an unlocked trap door on the roof.

EXAMPLE 1: The manager of Jeff's apartment building gave him a thorough tour of the "highly secure" building before Jeff decided to move in. Jeff was particularly impressed with the security locks on the gates of the high fences at the front and rear of the property. Confident that the interior of the property was accessible only to tenants and their guests, Jeff didn't hesitate to take his kitchen garbage to the dumpsters at the rear of the building late one evening. There he was accosted by an intruder who got in through a rear gate that had a broken lock. Jeff's landlord was held liable because she had failed to maintain the sophisticated, effective locks that had been promised.

EXAMPLE 2: The information packet given to Maria when she moved into her apartment stressed the need to keep careful track of door keys: "If you lose your keys, call the management and the lock will be changed immediately." When Maria lost her purse containing her keys, she immediately called the management company but couldn't reach them because it was after 5 p.m. and there was no after-hours emergency procedure. That evening, Maria was assaulted by someone who got into her apartment by using her lost key.

Maria sued the owner and management company on the grounds that they had completely disregarded their own standard (to change the locks promptly) and so were partially responsible (along with the criminal) for the assailant's entry. The jury agreed and awarded Maria a large sum.

Problems With Other Tenants

Sometimes danger lurks within as well as beyond the gate. And your landlord has a duty to take reasonable steps to protect you if another resident on the property (including a roommate) threatens to harm you or your property.

Your landlord should respond to a troublesome tenant in essentially the same way he would respond to a loose stair or broken front-door lock. A landlord who knows about a problem (or should know about it) is expected to take reasonable steps to prevent foreseeable harm to other tenants. If the landlord fails to do that, and you are injured or robbed by another tenant, you may sue and recover damages.

When the Landlord Must Act

The landlord won't be held liable for another tenant's illegal acts unless the problem tenant had done or threatened similar criminal conduct in the recent past, and the landlord knew about it. In short, you'll need to convince an insurance adjuster, judge, or jury that:

- it was reasonable to expect the landlord to know or discover the details of a tenant's past, and
- once known, the landlord could have taken steps to control or evict the troublemaker.

Unless there's a clear history of serious problems with the offending tenant, landlords usually win these cases. On the other hand, tenants sometimes win if they can show that the landlord knew about a resident's tendency toward violence and failed to take reasonable precautions to safeguard the other tenants.

> **EXAMPLE:** Sally complained to her manager that Earl, who lived in another unit, had repeatedly verbally and physically assaulted her. The manager promised to take care of the situation, but did not terminate Earl's tenancy or even warn Earl that he would be evicted if he didn't stop; nor did he place security cameras at the place of the attacks. Earl assaulted Sally again. The judge decided that the management owed Sally a duty to protect her from Earl's foreseeable attack. The jury decided that management breached that duty and that it was the legal cause of Sally's injuries. (Based on *Madhani v. Cooper,* 106 Cal.App.4th 412 (2003).)

TIP

If you fear violence from another tenant, let your landlord know in writing. Not only does this underscore the seriousness of the situation, but it will be irrefutable proof that the landlord was on notice that problems were brewing. When more than one resident complains, the landlord will face more pressure to take action. If there is an altercation later, the landlord cannot plausibly claim ignorance.

CAUTION

Get your facts straight before making accusations. If you believe that certain individuals are breaking the law—or just causing trouble—be certain that you have the facts straight before telling others about them. Otherwise, you might find yourself on the wrong end of a libel or slander lawsuit.

Domestic Violence, Stalking, Sexual Assault, Human Trafficking, and Abuse of Elder or Dependent Adult

Victims of domestic violence, stalking, sexual assault, human trafficking, or abuse of an elder or dependent adult may terminate a fixed-term lease on 30 days' written notice. You must include with the notice a copy of a court-issued restraining order, a police-issued emergency protective order, or a police report documenting the incident. The order or report must have been made within the previous 180 days. (CC § 1946.7.) Only the victim and family members (but not nonfamily roommates) may avoid liability for the rent for the balance of the lease term. If the perpetrator of the incident remains behind, the landlord can give him or her a three-day notice for "nuisance" and proceed with an eviction.

What Your Landlord Must Do

A landlord who knows about the potential for danger from another tenant must do something about the problem tenant, such as warn other tenants or evict the troublemaker.

For example, suppose your neighbor bangs on the walls every time you practice the violin during the afternoon—and the pounding is getting louder. If you've tried to talk things out and been greeted with a raised fist, it's time to alert the landlord. You can reasonably expect the landlord to intervene and attempt to broker a solution—perhaps an adjustment of your practice schedule or some heavy-duty earplugs for the neighbor. If the circumstances are more threatening—for example, your neighbor brandishes a gun—your landlord might be legally expected to call the police, post a security guard, and warn other tenants pending the speedy eviction of the dangerous tenant.

Intervention and eviction of the troublemaker are the usual ways that landlords meet their duty to take care that residents don't harm other residents. But the law doesn't require your landlord to have a crystal ball.

Getting a Restraining Order

If another tenant seriously threatens you and won't leave you alone, and your landlord either won't evict the aggressor or the eviction is taking some time, consider obtaining a court restraining order.

A judge will sign these orders after you demonstrate that you really are in danger—for example, the aggressor has made repeated verbal threats to harm you or your family. The order directs the person to stay away from you. Its principal value is that the police will react faster and more firmly than they might otherwise. To obtain a restraining order, call your local courthouse for information.

If you obtain a restraining order, make a copy and give it to your landlord and to the manager, if any. Ask the landlord to alert other on-site personnel, such as security guards and maintenance personnel, of the existence and meaning of the order. A wise landlord will usually consider a restraining order as ample grounds for a swift termination and eviction. If the aggressor returns after he is evicted, request that the landlord order him off the property and call the police.

If you get no cooperation from your landlord and are still fearful, move. Your safety is worth far more than your right to live in a particular rental space. Your landlord may feel that you have broken the lease and may try to keep your security deposit to cover unpaid rent for the balance of the lease or rental agreement, but if you go to court to contest this, your chances of winning are good. You can argue that by failing to evict the troublemaker, the landlord breached the covenants of habitability and quiet enjoyment, which justified your moving out. (See Chapter 6 for information on the warranty of habitability.) If your situation involves domestic violence, you may have specific rights. (See "Domestic Violence, Stalking, Sexual Assault, Human Trafficking, and Abuse of Elder or Dependent Adult" above.)

EXAMPLE: Abbot and his mother rented a duplex from Xavier, who knew that Abbot was emotionally disabled and took regular medication to control his behavior. Unknown to his mother or Xavier, Abbot began skipping his medication and eventually attacked Larry, the other tenant in the duplex, with a baseball bat. Xavier was not held liable, since it would have been illegal to refuse to rent to Abbot, a disabled person, under the Federal Fair Housing Amendments Act. Xavier did not know that Abbot had discontinued his medication, nor would it have been reasonable to expect Xavier to monitor Abbot's dosages. If Xavier had known that Abbot was off his medication, however, he would have been duty-bound to speak to Abbot and his mother, and possibly warn the other resident.

Illegal Activity on the Property and Nearby

Illegal activities on the premises create problems for law-abiding tenants and enormous financial risks and penalties for landlords. Law-abiding tenants move out, and may also sue if they are hurt or annoyed by drug dealers or other criminals. Landlords face trouble from other quarters—they can be fined for tolerating a legal nuisance, face criminal charges, and even lose their property.

(See "Activities That Are Always Considered Nuisances," below, for a list of illegal nuisances in California.)

Government Lawsuits Against the Landlord

The legal meaning of "nuisance" bears only a little resemblance to its meaning in everyday life.

California has vigorous nuisance abatement laws, which allow the government, and sometimes the neighbors, to sue to stop these sorts of problems. (CC §§ 3479, 3491.) Using public nuisance abatement laws against crime-tolerant landlords is increasingly common in large cities with pervasive drug problems. In extreme cases, where the conduct giving rise to the nuisance complaint is illegal (drug dealing or prostitution, for example), landlords themselves face civil fines or criminal punishment for tolerating the behavior.

Activities That Are Always Considered Nuisances

A "nuisance" is broadly defined as anything that is injurious to health, offensive to the senses, or unreasonably interferes with the free use and enjoyment of life or property. (CC § 3479.) Because of this broad language, knowing what is and is not a nuisance is often not clear. But certain acts are automatically deemed nuisances. They include:

- illegal gambling, lewdness, or prostitution (Penal Code §§ 11225 and following)
- use or sale of illegal drugs (H&S §§ 11570 and following; and CC §§ 3479, 3486)
- criminal street gang activities (Penal Code § 186.22a)
- holding dogfighting or cockfighting competition (CC § 3482.8), and
- unlawful distribution of weapons and/or ammunition. (CC § 3485.)

Seizure of the Landlord's Property

It's rare, but the government sometimes seizes property because of the illegal activities of one or more tenants. A successful forfeiture proceeding is absolutely devastating from the landlord's point of view. The landlord loses not only the property, but also all the rent money that the landlord received from the drug-dealing tenants.

Few tenants want to live in government-run housing that starts off as a drug den. But a landlord who hears the word "forfeiture" will probably be highly motivated to get rid of the offending tenants. If your building is plagued by drug dealing or other illegal activities, start by involving your local district attorney, city attorney, or county counsel.

Small Claims Lawsuits Filed by Neighbors

Overworked and understaffed police and health departments are often unable to make a real dent in problem-plagued neighborhoods.

Determined tenants and neighbors have stepped into the breach, bringing their own lawsuits seeking the elimination of the offensive behavior. Basically, tenants and neighbors sue a landlord for failing to take steps to clean up the property, and seek:

- monetary compensation for each of them for having put up with the situation. Each neighbor generally sues for the maximum allowed in state small claims court ($10,000), and the landlord often pays the maximum to *each one*, and
- an order from the judge directing the landlord to evict the troublemakers, install security, and repair the premises.

Small (But Sometimes Mighty) Claims Court

The private enforcement of public nuisance laws has been creatively and successfully pursued in small claims courts in California, where groups of affected neighbors have brought multiple lawsuits targeted at drug houses. This approach makes sense whenever a landlord is confronted by a large group of tenants all suing for the small claims maximum dollar amount, thus motivating the landlord to clean up the property.

In one case in Berkeley, California, after failing to get the police and city council to close down a crack house, neighbors sought damages stemming from the noxious activities associated with a crack house. Each of the 18 plaintiffs collected the maximum amount allowed in small claims court ($3,500 at the time), avoided the expense of hiring counsel, and sent the landlord a very clear and expensive message. The problem was solved within a few weeks.

Getting Results From the Landlord

Here are some suggestions on how to encourage your landlord to fulfill the responsibility to provide a safe place to live.

Evaluate the Situation

Before approaching your landlord with requests for improved security, collect hard evidence concerning the building's vulnerability to crime. The best way to evaluate the safety of your rented home is to conduct a security inspection of the rental property. Your goal is to answer two questions:

- If I (or a family member, roommate, or guest) were here alone at night, would I feel safe?
- If I were an assailant or a thief, how difficult would it be to get into the building or individual rental unit?

Analyze the Building

Start by circulating a letter to other residents, explaining your concerns and suggestions for improved security on the property, and solicit their comments. Call a meeting to discuss the results and plan your next moves.

You'll learn the most about your building's vulnerability if several tenants walk or drive around the rental property at different times of the day and night—you might see something at 11 p.m. that you wouldn't notice at 11 a.m. A reasonably safe and secure single-family home, duplex, or multiunit rental will have strong locks on windows and doors, good interior and exterior lighting, and other features that will hinder unwanted intrusions. To see how your rental unit, building, and grounds measure up, consult the list of Important Security Features, below.

You may also want to get a security evaluation and advice from your renters' insurance agent. Because insurance companies are potentially liable for large settlements or awards, they are concerned with reducing crime on rental property. So talk to your insurance company and, even more important, encourage your landlord to talk to hers about equipment and safety systems that can prevent break-ins and assaults.

Involve Other Tenants

If you are a renter in a multiunit building, work with other tenants on security issues. Here's why:

- **Landlords respond to armies more readily than to individuals.** Once you get other tenants involved, your chances of getting the landlord to implement anticrime measures greatly increase. The consequences of rent withholding, complaints to the police, or small claims actions are much greater if done by a group than by a sole tenant. (These tactics are discussed below.)
- **Involving others reduces the chances of retaliation.** You are protected against landlord retaliation (such as terminations, rent hikes, and withdrawal of services) for exercising your rights to voice your opinions to the landlord, complain to enforcement agencies, and organize collectively. (See Chapter 14 for a thorough explanation of antiretaliation laws.) But if your landlord does retaliate, you'll have to fight it, which will involve time and effort. Acting as a group may make it less tempting for your landlord to retaliate—few landlords want instantly empty buildings or, worse, buildings full of angry residents.
- **You'll learn more about security problems.** For example, maybe the upstairs neighbor, who is home during the day, can tell you that the 24-hour security guard really lounges in the manager's office all afternoon, watching the soaps.
- **Involving others increases your safety.** Once you and your neighbors realize that you are all in the same boat, it is more likely that you will look out for each other.

Resources: Organize Against Drug Dealers

Contact your local police department to find out if they have a "Safe Streets Now!" program in place. This approach to public nuisances (targeting everything from drug dealing to abandoned, unhealthy buildings) empowers neighbors to deal with the problem without directly confronting dealers or even the property's owner. Here's how it works:

Under the auspices of the local police department, neighbors, police, city staff, and community-based organization representatives come together to put pressure on the landlord who is hosting the nuisance. The program consists of these steps:

- The neighbors identify the property creating the public nuisance.
- Neighbors take notes on what's happening, recording their findings in a log and gathering other evidence (such as photos).
- Neighbors phone in or otherwise relay each incidence to the police.
- Neighbors write a "demand letter" to the property owner, demanding that the owner rid the property of the problem and promising to take the owner to small claims court if the nuisance isn't corrected promptly. Each neighbor will sue for $10,000 in damages (the maximum allowed in small claims court). landlords quickly get the picture: Suddenly they're facing many thousands of dollars in damages. This usually gets their attention.

In the majority of cases, landlords voluntarily remove the problem tenants or loiterers from their properties after receiving the demand letter, and the cases never make it to court.

Safe Streets Now! programs are already set up in several California cities. If your town doesn't have one, there's no reason it can't start one—contact another city that has one for guidance (type "Safe Streets Now" into your Internet search engine and scan the results for California cities).

Consider the Neighborhood

The extent of your vulnerability depends on not only the security systems in your building, but also the surrounding neighborhood. Many police departments keep records of reports of criminal activity in city neighborhoods. This can be a gold mine of information that you can pass on to your landlord. Also, neighborhood associations sometimes have information about criminal activities in the surrounding area. Then, armed with what you have learned, you are in a good position to suggest ways both your landlord and other tenants can keep the rental property safe.

If there has been little or no crime in your area, you have less to worry about and less legal reason to expect your landlord to equip the property with extensive security devices.

Request Improvements

Once you and other tenants have gathered information about your vulnerability to crime and what can be done to reduce your risk, you'll be ready to take specific steps to make your lives safer.

It's quite likely that you know more about the security needs of the rental units and building (and landlords' legal responsibilities) than the owner, especially if the owner is an absentee landlord. To improve security in your rental, you may first have to educate your landlord about:

- **Statutory security requirements.** Since state and often local ordinances or laws require specific security devices, such as dead bolts, peepholes, or window locks, start by asking your landlord to comply with the law. Put your request in writing. (Of course, keep copies of all correspondence.) Attach a copy of the ordinance or statute to your request. If you get no response, submit a second request. Then, if there is still no compliance, consider your options, which include the right to install the locks using the repair and deduct or rent withholding remedies. (See "Protecting Yourself," below.)

- **Promised security measures that are missing or malfunctioning.** If the landlord has promised security beyond the basics dictated by law—such as an advertisement promising garage parking or security personnel—you have a legal right to expect that the landlord deliver; see above. Send a written reminder to the landlord and attach a copy of the advertisement or lease provision that backs up your request.
- **Security required by the surroundings and circumstances.** Your own assessment of the property and the neighborhood may lead you to conclude that the landlord is shirking his duty to protect tenants. But if you do not have a clear-cut ordinance or statute to point to, you will have to do some extra work motivating the landlord. Use the information you've gathered to convince the landlord that, given the area's crime problems, more effective security measures are required—and that if security isn't improved, the landlord could be legally liable for injuries that result. Try to be as specific as possible in your requests.

Oral requests sometimes get results, but more often they are ignored. Putting security requests in writing and having them signed by as many tenants as possible is a far better way to get results. Most landlords understand that when tenants have a written record of their complaints about personal safety issues—especially when the landlord has not kept promises to provide security systems—and nothing is done, the chances of a successful lawsuit go way up.

So write a letter even if you think it's hopeless, even if your landlord is notoriously stingy or impossibly stubborn. By creating a paper trail, you have provided the landlord with a considerably increased incentive to take action. Your letter should:

- remind the landlord that he or she has control of the problem
- set out the foreseeable consequence (an assault) of not dealing with the property's obvious lack of security
- propose that the solution is relatively easy, and
- suggest that the consequences—a burglary or assault—are serious.

A sample letter alerting the landlord to dangerous conditions is shown below.

Meet With the Landlord

If your written requests don't produce results, invite your landlord to meet with you (and other tenants, if possible) to discuss your concerns. You may want to involve a local mediation service, which has the advantage of giving you a skillful and neutral moderator. You'll be especially glad for the presence of the mediator if your landlord arrives with an attorney. If you or other tenants end up in court over your landlord's failure to keep the premises safe, the refusal to discuss the situation with you will hardly help the landlord's case. (Chapter 18 gives suggestions on finding and working with a mediator.)

Get Help From the Government

If gentle (or even concerted) persuasion fails to get desired security improvements, call in the reinforcements. Depending on what the exact problem is and where you live, contact either building or health inspectors or local law enforcement agencies, who have the power to order the landlord to comply with the law. For example, if the landlord refuses to oust drug-dealing tenants, contact the local district attorney (and ask about a Safe Streets Now! program—see "Resources: Organize Against Drug Dealers," above). This alone may result in the landlord taking the desired actions.

Withhold Rent

If your rented home becomes truly dangerous, it may be legally considered uninhabitable—which means that you might be justified in withholding rent. And if you're dealing with broken or missing locks, in violation of state law, withholding is definitely an

option. A safer option would be to repair the lock yourself and deduct the cost from your rent. (CC §§ 1941.3, 1942.) (Chapter 6 explains rent withholding and repair and deduct in detail.)

Sample Letter Alerting the Landlord to Dangerous Conditions

789 Westmoreland Avenue, #5
Central City, CA 00000
555-123-4567

January 3, 20xx

Mr. Wesley Smith, Landlord
123 East Street
Central City, CA 00000

Dear Mr. Smith:

As tenants of the Westmoreland Avenue building, we are concerned that there is a dangerous condition on the property that deserves your prompt attention.

As you know, the large sliding doors on the bottom floor (in the lobby) are secured by turn locks that can be easily forced open. On occasion we have seen a dowel placed in the track to prevent the doors from being opened, but lately the dowels have often been missing. Several times, the doors have even been left open all night.

We are worried that an intruder will have an easy time of getting into the building. There have been several burglaries in the neighborhood within the past two months. The situation would be greatly helped if you could send a glass repairperson to replace the locks with much stronger ones. Needless to say, a burglary or assault is a worrisome prospect.

Thank you for your prompt consideration of this matter.

[*signed by as many tenants as possible*]

Because this is a relatively drastic step, we suggest you consider it carefully—if you withhold rent and trigger an eviction lawsuit for nonpayment of rent, you stand to lose your rental if you lose. Here are some guidelines that must be met by any claim that a unit is uninhabitable because of high crime danger.

- **Make sure the problem is truly serious now, not merely annoying or a potential problem.** For example, having to walk past dope dealers on your way through the front hall is unavoidable, frightening, and loaded with potential for violence. On the other hand, unverified stories regarding prostitution in your neighborhood or even in your building are less compelling.
- **Don't act until you've given the landlord notice of the problem and time to respond.** In general, as discussed in Chapter 6, you must tell the landlord about it and allow time to respond, either by fixing the problem or approaching the legal authorities (police or district attorney), who are better equipped to deal with it. For example, if drug dealers have moved in next door, you must alert the landlord and allow time to begin eviction procedures; if gangs have invaded your neighborhood, you must complain to the landlord and give the police time to act.
- **Make sure the landlord has a legal obligation to provide the security requested.** For instance, the landlord has a statutory duty to provide working locks and other safety features. But withholding rent because the landlord has not hired security guards or taken more extraordinary measures is extremely risky, and you face a serious risk of being evicted if you do this.

Break the Lease

If your rented home is legally considered uninhabitable, you might be justified in moving out, for the same reasons you may be able to withhold rent.

You may also be justified in breaking the lease and moving out if the promised security was an important factor in your decision to rent your place, and the landlord failed to follow through on that promise. This remedy is explained in Chapter 6 in connection with repairs or maintenance that have been promised but not delivered.

EXAMPLE: Wendy, a flight attendant, rented her apartment in Safe Harbor after reading its advertisement in the local newspaper that promised "Security personnel on duty at all times." When she was shown around the property, Wendy told the manager that she often came home late at night. She was assured that there was a 24-hour guard service. However, after coming home several nights in the early morning hours and discovering that there were no security guards on duty, Wendy confronted the management and was told that financial constraints had made it necessary to cut back on the guards' hours. Wendy wrote the landlord a letter asking that the guard service be restored. When it wasn't, she promptly moved out.

Safe Harbor kept Wendy's entire security deposit (one month's rent), claiming that her departure violated the lease and that management had been unable to find a replacement tenant for four weeks. Wendy sued Safe Harbor for the return of her entire deposit, arguing that in fact it was Safe Harbor who had broken the lease by failing to provide security as promised. The judge decided that the promise of 24-hour security was an important part of Safe Harbor's obligations and that its failure to deliver constituted a breach of the lease, which excused Wendy from her obligation to stay and pay rent. And the judge ordered Safe Harbor to refund Wendy a portion of the rent she had already paid, on the grounds that she had paid for an apartment with a guard but had not received it.

You may be able to break a lease and move with little or no financial consequence. Your landlord will have a duty to make reasonable efforts to rerent your unit and apply the new rent to what you owe on the balance of your lease. (This duty is discussed in detail in Chapter 12.) If the rental market is tight and your rental is reasonably attractive and competitively priced, your landlord may have little excuse for not rerenting quickly. Of course, if the dangerous conditions that prompted your early departure are noticed by prospective tenants (who reject the rental for that reason), the landlord may have a hard time rerenting. Fortunately for you, the harder it is for the landlord to rerent, the stronger your case that the rental was unacceptably unsafe, justifying your breaking the lease. In short, you win either way.

Sue in Small Claims Court

Your most effective response to inadequate security or dangerous surroundings might be aggressive action in small claims court. Interestingly, small claims court can be an appropriate tool to deal both with simple problems like the installation of a deadbolt and complex ones like ridding the building of drug-dealing tenants.

If you're lucky, the difference between a secure apartment and an unsecured one might be the simple addition of a better set of outdoor lights, trimming some bushes, or replacing burned-out lightbulbs in the garage or hall. If your repeated requests for action have fallen on closed ears, and local inspectors can't or won't come to your aid, what should you do?

Small claims court might be the answer. Simply perform the work yourself (preferably with other tenants) and then sue the landlord for the cost. This route may, however, put you at risk, especially if your lease or rental agreement says "no improvements or alterations without the landlord's consent." Your risk of eviction for violating a lease clause will probably be less if the job you do is required by local law, such as a code-required dead bolt, rather than a modification like trimming the bushes that you have concluded is required for your safety. In short, if it's something clearly required of the landlord, he'll have a hard time laying blame on you for doing his job, and your lease clause violation will appear almost necessary.

Important Security Features

- Exterior lighting directed at entranceways and walkways that is activated by motion or a timer, and not dependent on the memory of managers or tenants to turn it on. Many security experts regard the absence or failure of exterior lights as the single most common failing that facilitates break-ins and crime.
- Good, strong interior lights in hallways, stairwells, doorways, and parking garages.
- Sturdy deadbolt door locks on individual rental units and solid window and patio door locks, as well as peepholes (with a wide-angle lens for viewing) at the front door of each unit (see above for the locks required by law). Lobby doors should have deadbolt locks. Solid metal window bars or grills over ground-floor windows are often a good idea in higher-crime neighborhoods, but landlords may not be able to install them due to restrictions of local fire codes. All grills or bars should have a release mechanism allowing the tenant to open them from inside (local codes frequently require these grills to open from the inside).
- Intercom and buzzer systems that allow you to control the opening of the front door from the safety of your apartment.
- Neat and compact landscaping that does not obscure entryways or afford easy hiding places adjacent to doorways or windows.
- In some areas, a 24-hour doorman is essential and may do more to reduce crime outside the building than anything else.
- Driveways, garages, and underground parking that are well-lit and secure from unauthorized entries. Fences and automatic gates may be a virtual necessity in some areas.
- Elevators that require a passkey for entry. If this won't solve the problem, you may even want to request the landlord to install closed circuit monitoring. Obviously this is expensive, since it requires someone to watch the monitor, but it may be worth suggesting if your building has fairly high rents or is in a particularly crime-prone area.

Protecting Yourself

Faced with an unsafe living situation, your only option may be to pursue self-help remedies such as installing your own security protections or moving out.

Use Good Judgment

If you live in a dangerous building or high-crime neighborhood, your first thought must be to watch out for yourself. Just as defensive driving techniques may do more to keep you safe than confronting dangerous drivers or equipping your car with every imaginable safety device, you'll want to rely primarily on your own good judgment and willingness to change your habits.

If you have identified vulnerable aspects of your building or rental unit, chances are that others have, too. If you were a burglar or mugger, how would you strike? Avoid dangerous situations—for example:

- Don't use an isolated parking lot late at night.
- Consider curtailing your evening's activities. No late-night movie is worth the risk of an assault.
- Use a fan for air circulation instead of opening easily accessible windows at night.

Install Your Own Security Protections

In some situations, you may be able to take matters into your own hands, at least as regards your own rented space. Although your lease may prohibit you from making alterations or repairs without the landlord's permission (see Chapter 8), you can use self-help methods of rent withholding and repair and deduct if you need to supply the door and window locks mandated by state law (CC § 1941.3). Be sure to follow the steps described in Chapter 8 for notifying the landlord first, and document your costs. And because your landlord has the right to enter in an emergency, you have to give the landlord keys to any locks you install.

You may be able to install effective security devices that do not require permanent installation and thus won't risk violating your landlord's ban on alterations. For example, consider using a motion-activated alarm that you hang from a door. Your local hardware store will have other items.

Consider Moving

Sad to say, often your most effective response to a dangerous rental situation is to move. Many tenants on a tight budget believe they can't afford any better alternatives. While understandable, this view is often wrong. Look around your area for places where low rents don't mean high crime. Although sometimes well-kept secrets, these neighborhoods often exist. Or consider the possibility of getting a roommate or sharing a house so you can afford to live in a better part of town.

If you have a month-to-month rental agreement, you can usually move out with 30 days' notice. Breaking a lease may be a little more difficult, unless you're moving out because your rental is uninhabitable or your landlord failed to follow through with promised security measures, as discussed in "Getting Results From the Landlord," above.

CHAPTER 12

Breaking a Lease, Subleasing, and Other Leasing Problems

A lease lasts for a fixed term, typically one year. As a general rule, neither you nor your landlord may unilaterally end the tenancy, unless you have violated the terms of the lease or the landlord has failed to meet a responsibility, such as to provide a habitable place to live. Here's an overview of special issues that arise when a tenant rents under a fixed-term lease, as opposed to a month-to-month rental agreement.

What Happens When the Lease Runs Out

Often a tenant wishes to stay in a dwelling after a lease term expires. If you are in this situation, read your lease carefully, as it may have a provision covering what happens at the end of the lease term. In the absence of a lease provision, state law provides that if a lease runs out and the landlord thereafter accepts rent, the tenant becomes a month-to-month tenant under the same terms outlined in the old lease. (CC § 1945.) All the terms of the original lease, with the exception of the period-of-occupancy clause, are still binding and become, in effect, an oral month-to-month agreement. This means that in the case of an expired one-year lease that becomes month to month, the landlord can terminate the tenancy with a 60-day notice, and the tenant can terminate with a 30-day notice. The rent can be increased after a 30- or 60-day notice, depending on how high the increase is.

Sometimes a lease will contain a provision calling for automatic renewal if the tenant stays beyond the end of the lease term. This would mean that if a tenant held over one day after a one-year lease expired, he would have renewed the lease for another year. This provision is legal only if the renewal or extension provision is printed in at least eight-point boldface type, immediately above the place where the tenant signs the lease. If a renewal provision is not set forth in this way, the tenant may legally disregard it. (CC § 1945.5.)

Under most rent control and just cause for eviction laws, a landlord is not allowed to evict just because a fixed term lease has ended. (See Appendix A for more details.)

Subleases and Assignments

A subtenant is a person to whom a tenant subleases all or part of the property. This can occur where the tenant moves out temporarily—for example, for a couple of months in the summer—and rents the entire dwelling to someone else, or where the tenant rents one or more rooms while continuing to live there. (See Chapter 2 for a discussion of adding a roommate.)

Typically, a subtenant does not have a separate agreement with the landlord. The subtenant's right of occupancy depends on:

- the continuing existence of the tenancy between the landlord and the tenant, and
- whatever implied, oral, or written rental agreement the subtenant has with the tenant, who functions as the subtenant's landlord.

But what about the tenant who has no intention of returning, such as a tenant with a year lease who stays six months and sublets to someone else for the remaining six months of the lease term? Technically, this is not a sublet, but an "assignment," under which the tenant has legally transferred all rights to the property to someone else. We distinguish the term "assignment" from "sublet" in part because lawyers often do, and to explain why many lease and rental agreement forms forbid both assignments and sublets without the owner's consent.

There is one important technical difference between an assignment and sublease: Where an assignment is involved, the new tenant (the "assignee") is responsible to the landlord for everything the original tenant was liable for—even without an agreement between that person and the landlord. (CC § 822.) (The previous occupant (assignor) remains liable to the landlord also, unless the landlord agrees otherwise in writing.) This is different from the situation in which a tenant sublets to a second tenant who is responsible to the first tenant, not the landlord.

Tenants normally face the need to sublease or assign their tenancies in the following situations:

- You have a lease or a rental agreement and want to leave for some set period of time and then return and get your home back (see "Subleasing and Returning Later," below).
- You have a lease and want to leave permanently before it ends (see "How to Break a Lease," below).
- You want to bring in a roommate (see Chapter 2).

Most leases and rental agreements have provisions that prohibit subletting and assignment without the consent of the landlord. If you violate these provisions, you could face an eviction. Therefore, it is important that you read your lease or rental agreement before you take any steps toward assigning or subletting. That means, in most instances, that you have to ask your landlord ahead of time for permission to sublet. (For more on subleasing, see Chapter 2, "Sharing a Home".)

RENT CONTROL

Many rent control jurisdictions have additional rules regarding subleasing and assignment. Some of these rules can override the provisions in your rental agreement. It is a good idea to contact your rent board and familiarize yourself with any rules on this subject before you ask your landlord for permission to have a subtenant.

Subleasing and Returning Later

Technically speaking, you are entitled to sublease only when you have a lease yourself in the first place. In addition, most leases and rental agreements require the landlord's consent in advance for subletting. If you sublet without it, the sublease is probably invalid, but your landlord can't unreasonably withhold consent if you do ask beforehand. (*Kendall v. Pestana,* 40 Cal.3d 488 (1986).)

If a tenant sublets on the sly when a lease or rental agreement prohibits it, the landlord may be able to evict both the original tenant and the subtenant. In addition, you can't sublease what you don't have a right to. So if you have a month-to-month tenancy, you can sublet on that basis, but you can't give someone a one-year sublease. If you have a one-year lease, you can't sublease beyond that period—though in practice many landlords continue to accept monthly rent after a fixed-term lease expires. Legally, that converts the fixed-term tenancy to a month-to-month one.

Whenever you let anyone move into your place for a while, it is important to have a written agreement, incorporating your lease or rental agreement, which sets out all the terms of the arrangement. We include here an example of a possible sublease arrangement, with the warning that it will have to be modified to suit your individual circumstances. Also, your landlord may require your subtenant to sign a separate rental agreement, giving the new person all the rights and responsibilities of a tenant.

How to Break a Lease

If you want to move out before your lease expires, you may not have too much of a problem. In areas of California that are popular, the same shortage of housing that gives the landlord an advantage at the time of the original rental also makes it possible for a tenant to get out of a lease fairly easily.

Tenants who are in the military or are victims of domestic violence may have the legal right to move out early (see "Tenants Who May Break a Lease," below). Tenants may also have the right to break a lease and move out early due to defective conditions in the rental premises, as discussed in Chapter 6 (CC § 1942).

General Rules

When you sign a lease, you promise to pay rent for certain premises for a certain time. Simply moving out does not get you off the hook as far as paying for the whole lease term is concerned. You have made a contract and are legally bound to fulfill it. This means that you are obligated to pay rent for

the full lease term, whether or not you continue to occupy the dwelling. (CC § 1951.2.) If you do not pay, your landlord can sue you, get a judgment, and try to collect the money by doing such things as attaching your wages.

Tenants Who May Break a Lease

Two groups of tenants have special rights to break a lease without responsibility for future rent:

- **Tenants who enter active military service.** The Servicemembers' Civil Relief Act (50 App. U.S.C.A. §§ 501 and following) allows tenants who enter active military service (or are called up to the National Guard for more than one month at a time) *after* signing a lease, to break the lease with 30 days' written notice.
- **Victims of domestic violence, stalking, or sexual assault.** These tenants may break a lease on 30 days' written notice, which includes a copy of a court-issued restraining order against the perpetrator, a police-ordered "emergency protective order," or a police report documenting the incident. (CC § 1946.7.) Only the victim and family members (not nonfamily roommates) may avoid liability for the rent for the balance of the lease term. If the perpetrator of the incident remains behind, he or she can be evicted under a "nuisance" theory, starting with the landlord giving that person a three-day notice to vacate (see Chapter 14 for details). (CCP § 1161 (4).)

But the law requires landlords to take all reasonable steps to keep losses to a minimum—a concept known as mitigation of damages. (CC § 1951.2.) This means that when a tenant leaves in the middle of the lease term, the landlord must take reasonable efforts to rent the premises to another tenant as soon as reasonably possible.

If the landlord rerents the property quickly and doesn't lose any rent, the former tenant doesn't owe the landlord anything. However, in areas where the market is soft, the tenant could end up paying for several months. The tenant could also end up paying for the difference between the old, high rent and the new, lower market rate rent.

> **EXAMPLE:** Susan Wong rented an apartment from Stephan Leness in January for a term of one year, at the monthly rent of $1,000. Everything went well until September, when Susan had to move to be closer to her invalid mother. Under the general rule, Susan is theoretically liable to Stephan for $3,000—the rent for October, November, and December. However, if Stephan mitigated these damages by taking out an ad and rerenting on October 15, Susan would owe much less. If the new tenant paid $500 for the last half of October and $1,000 in November and December, Stephan must credit the total $2,500 he got from the new tenant against Susan's $3,000 liability. This leaves Susan liable for only $500, plus Stephan's advertising costs of $20, for a total of $520.

To summarize, a fixed-term tenant who leaves before the end of the lease is responsible for:

- the remaining rent due under the lease, plus any reasonable advertising expenses incurred in finding a new tenant, minus
- any rent the landlord can collect from a new tenant between the time the original tenant leaves and the end of the lease term.

CAUTION

If your lease contains a liquidated damages clause—requiring you to pay the landlord a certain amount of money as damages for breaking the lease—a court probably won't make you pay it if the amount of liquidated damages far exceeds the amount the landlord actually lost. You will have to compensate the landlord only for his actual losses. (See "Penalty and Liquidated Damages Provision" in Chapter 1 for more on liquidated damages clauses.)

CAUTION

Your lease may include a clause stating that the landlord will not unreasonably withhold consent to a proposed sublet or assignment, and that the landlord intends to use the "lock-in provision" provided by state

law. If so, and you break the lease and move out without coming up with an acceptable substitute, the landlord can choose not to rerent and mitigate your damages. Instead, the landlord can simply secure the premises and sue you for the unpaid rent when the lease expires. (CC § 1951.4.)

Sample Sublease Agreement

Sublease Agreement

This is an agreement between Leon Hernandez of 1500 Acorn Street #4, Cloverdale, California, and Joan Ehrman, now residing at 77 Wheat Avenue, Berkeley, California.

1. In consideration of $600 per month payable on the first day of each month, Leon Hernandez agrees to sublease apartment #4 at 1500 Acorn Street, Cloverdale, California, to Joan Ehrman from August 1, 20xx to December 30, 20xx.
2. Leon Hernandez hereby acknowledges receipt of $2,400, which represents payment of the first and last months' rent and a $1,200 security deposit. The security deposit will be returned to Joan Ehrman on December 30, 20xx if the premises are completely clean and have suffered no damage.
3. A copy of the agreement between Smith Realty and Leon Hernandez is stapled to this agreement and is incorporated as if set out in full. Joan Ehrman specifically covenants and agrees to adhere to all the rules and regulations set out in Sections 1-10 of this lease.

Leon Hernandez	9/30/20xx
Leon Hernandez	Date
Joan Ehrman	9/30/xx
Joan Ehrman	Date

Self-Protection When Breaking a Lease

Notify your landlord in writing as soon as you know that you are going to move out before the end of a lease term. The more notice you give the landlord, the better your chances are that he will find another tenant.

After sending the landlord your written notice, it is wise to stop by and have a talk. The landlord may have another tenant ready to move in and not be concerned by your moving out. In some cases, the landlord may demand an amount of money to compensate him for rerenting the place. If the amount is small, it may be easier to agree to pay rather than to become involved in a dispute. If your landlord has a deposit, you might even offer a part of it (or all of it) in full settlement of all possible damage claims arising from your leaving in the middle of the lease term. As noted above, since the landlord has a duty to try and rerent the place (mitigate damages), and since this is often reasonably easy to do, you should not agree to pay much in the way of damages. Get any agreement you make in writing. A sample agreement is shown below.

Sample Agreement Regarding Cancellation of Lease

Agreement Regarding Cancellation of Lease

This agreement is between Leon Hernandez of 1500 Acorn Street #4, Cloverdale, California, and Smith Realty Co., of 10 Jones Street, Cloverdale, California, and by its owner, B. R. Smith.

In consideration of the amount of $150, Smith Realty Co. hereby agrees to cancel the lease of Leon Hernandez on Apt. #4 at 1500 Acorn Street, Cloverdale, California, as of October 31, 20xx. The $150 payment is hereby acknowledged to be made this date by subtracting it from Leon Hernandez's $1,200 security deposit.

B.R. Smith	9/30/20xx
B. R. Smith	Date
Leon Hernandez	9/30/xx
Leon Hernandez	Date

Sample Letter to Landlord Suggesting Potential Tenants

1500 Acorn Street #4
Cloverdale, California
October 1, 20xx

Smith Realty Co.
10 Jones Street
Cloverdale, California

As I told you on September 15, 20xx, I plan to move out of this apartment on October 31, 20xx. Because I wish to keep damages to a minimum, I am giving you the names, addresses, and phone numbers of four people who have expressed an interest in renting this apartment on or about November 1, 20xx at the same rent that I pay. I assume that you will find one of these potential tenants to be suitable, unless of course you have already arranged to rent the apartment.

(*include list of names, addresses, and phone numbers*)

Very truly yours,
Leon Hernandez
Leon Hernandez

If it is not possible to deal rationally with your landlord, or if you can't get a written release, you should take steps to protect yourself. Don't let your landlord scare you into paying a lot of money. Simply post an advertisement on Craigslist or in your local paper to lease your dwelling at the same rent that you are paying. When people call, show them the place, but tell them that any lease arrangement must be worked out with your landlord. Also request that the potential tenants contact the landlord directly. To protect yourself, keep a list of all tenants who appear suitable and who express an interest in moving in. Include information on your list that shows that the potential tenants are responsible—for example, include something about their job or family. Write a letter to your landlord with a list of the names (see the sample, above), and keep a copy for your file. The landlord has a right to approve or disapprove of whomever you suggest as a tenant, but may not be unreasonable about it; landlords must keep their losses to a minimum (mitigate damages) as discussed above. Also, when you move out, be sure the unit is clean and ready to rent to the next tenant, so that your landlord has no basis to claim that it was not in rentable condition and that you are responsible for rent during the time it took to get it cleaned.

Possible Legal Action

If you move out and break a lease, the landlord may keep your deposit or sue you for the lost rent and the expense of getting a new tenant. This is not likely if the landlord has gotten a new tenant to move in almost immediately after you've moved out, because in such a situation there would be little or no damages. However, occasionally it takes the landlord a little time or expense (for advertising) to get a new tenant. This is especially likely in a resort area (off season) or near a university in the summer. In this case, a landlord may pocket the deposit or sue in small claims or superior court.

If you are sued, you will receive legal documents setting out the landlord's claim. Read them carefully to see if the amount the landlord asks for is fair. As explained above, if you take the proper steps to protect yourself, the landlord should be entitled to little or nothing. In unusual situations, however, the landlord may be entitled to some recovery. For example, if a tenant with a year's lease at a $1,200 per month rental moved out in midyear and no new tenant could be found who would pay more than $1,150 per month, then the landlord would likely recover damages. In this case, the old tenant would be liable for the $50 a month difference between what he paid and what the new tenant paid, multiplied by the number of months left on the lease at the time he moved out. A tenant might also be liable for damages if it took the landlord some period of time, such as a month, to find a new tenant. In this case, the first tenant

would be liable for the month's rent (if the landlord had made diligent efforts to find a new tenant).

Landlords often simply keep the entire deposit—it's a lot easier than going to court. In that event, you'll have to go to small claims court to sue to get it back. Use the same approach you'd adopt if the landlord had gone to court first.

If you are sued in small claims court for an amount that seems excessive, simply tell the judge your side of the case and bring with you any witnesses and written documentation that would help tell your story. If you are sued in superior court, you may want to see a lawyer, especially if there is a lot of money involved. (See Chapter 18.)

Belongings You Leave Behind

If you leave belongings on the premises when you move out, you must ask the landlord for them, in writing, within 18 days. Your request must describe the property and must give the landlord your mailing address. Within five days of receiving your request, the landlord may demand, in writing, that you pay reasonable costs for storage. You must pay the charges and pick up the property within 72 hours of receiving the landlord's demand.

If the landlord doesn't comply with your request, you can sue for your actual damages and, if the landlord acted in bad faith, for another $250 in damages. (CC § 1965.)

The landlord may notify you, in writing, that the property is still there. The notice should describe the property and tell you where the property can be claimed, how long you have to claim it, and that you may have to pay reasonable costs for storage. The landlord must give you at least 15 days (18 days, if the notice is mailed) to claim the property.

If the property is worth less than $700, the landlord is free to dispose of it. If it is worth more than that, the landlord must sell it at a public sale, subtract costs of sale and storage, and turn the rest over to the county. You have a year to claim the net profit from the sale. (CC §§ 1983, 1988.)

Landlords Must Notify Tenants of Right to Reclaim Abandoned Property

All 30-day and 60-day notices, and all subsidized housing 90-day termination of tenancy notices, must contain the following statement about state law allowing former tenants to reclaim abandoned property after having vacated the rental premises. (CC §§ 1946, 1946.1.)

NOTICE: State law permits former tenants to reclaim abandoned personal property left at the former address of the tenant, subject to certain conditions. You may or may not be able to reclaim property without incurring additional costs, depending on the cost of storing the property and the length of time before it is reclaimed. In general, these costs will be lower the sooner you contact your former landlord after being notified that property belonging to you was left behind after you moved out.

CHAPTER 13

Security Deposits and Last Month's Rent

Almost all landlords require their tenants to put up some money before moving in. This payment might be called a "security deposit," "cleaning fee," "last month's rent," or something else.

Security deposits can add up to a lot of money—often several thousands of dollars. Landlords usually want to get as much as they can so they won't have to go chasing after you for unpaid rent or any costs of repairing or cleaning the premises after you leave. The tenant, who usually wants to fork over as little as possible, often finds that it's very difficult to talk a landlord into reducing a deposit. Unfortunately, there is little we can say that will help you to get a potential landlord to be reasonable in this regard, assuming the deposit is within the statutory maximum discussed below. However, because security deposits constitute a big investment on your part, and because deposits have historically been a major source of friction between landlord and tenant, it is essential that you understand the legal rules in this area.

Amount of Deposit

State law provides that the total of all deposits and fees required by the landlord—for security, cleaning, last month's rent, and so on—may not exceed an amount equal to two months' rent, if the premises are unfurnished. If the premises are furnished, the limit is an amount equal to three months' rent. If you have a waterbed, the maximum allowed deposit increases by half a month's rent—to 2.5 times the monthly rent for unfurnished property and 3.5 times the monthly rent for furnished property. (CC § 1950.5(c).)

Suppose the landlord supplies the stove and refrigerator, but no other "furniture." Does this make the place "furnished"? We don't think so—though the statute is not clear on this. If the landlord provides basic furniture (beds, tables, and so on), obviously it is furnished and the landlord is legitimately entitled to a higher deposit because the potential for damage is high. But, in our opinion, owners are not exposed to that much risk of loss when they provide only the stove and refrigerator, and therefore should be allowed to require a deposit of only up to two months' rent. Also, in the rental business, "furnished" is usually taken to mean the inclusion of all basic furniture.

State law also says: "This subdivision does not preclude a landlord and a tenant from entering into a mutual agreement for the landlord, at the request of the tenant and for a specified fee or charge, to make structural, decorative, furnishing, or other similar alterations, if the alterations are other than cleaning or repairing for which the landlord may charge the previous tenant as provided by subdivision (e)." (CC § 1950.5(c).) The intent of this provision is clearly to allow the landlord to require compensation for strange or unusual alterations requested by the tenant. This, of course, is reasonable. However, there is a danger that some landlords may improperly try to reintroduce all sorts of extra or nonrefundable fees under this exception to the basic deposit rules. Be awake to this possibility!

If the landlord is forced to use some of the security deposit during your tenancy (for example, because you broke something and didn't fix it or pay for it), the landlord may require you to replenish the security deposit.

> **EXAMPLE:** Millie pays her landlord, Maury, a $700 security deposit. Millie goes on vacation, leaving the water running. By the time Maury is notified, the overflow has damaged the paint on the ceiling below. Maury repaints the ceiling at a cost of $350, taking the money out of the security deposit. Maury is entitled to ask Millie to replace that money.

Nonrefundable Deposits

No lease or rental agreement may call any deposit "nonrefundable." Nor may a landlord escape this rule by demanding a "cleaning" or "security" or "pet" fee instead of using the word "deposit." Under the law, the security deposit rules we discuss

here apply to any "payment, fee, deposit or charge" that's intended to cover damage and unpaid rent. (CC § 1950.5.)

Be sure to understand that landlords may impose a fee, up to $42, (which may increase yearly, according to the Consumer Price Index) to cover expenses associated with a credit check. (CC § 1950.6.) Landlords may not charge initiation fees—these are considered part of the security deposit. (CC § 1950.5(b).)

What the Deposits May Be Used For

State law says that the deposit may be used by the landlord "in only those amounts as may be reasonably necessary" to do the following four things *only*:

1. to remedy defaults in payment of rent
2. to repair damage to the premises caused by the tenant (except for "ordinary wear and tear")
3. to clean the premises, if necessary, when the tenant leaves, and
4. if the rental agreement allows it, to pay for the tenant's failure to restore or replace personal property. (CC § 1950.5(e).)

One of the biggest sources of tenant-landlord dispute centers around cleaning. For example, how clean must the tenant leave the premises when the tenant vacates? The Legislature provided the answer, but only for tenancies that begin on or after January 1, 2003: The tenant must return the unit to the same level of cleanliness it was in at the beginning of the tenancy. (CC § 1950.5(b).) For tenants whose tenancies began before that date, there is no clear answer (one reason the Legislature enacted this provision).

If you are stuck with a pre-January 1, 2003 rental agreement or lease that has unclear language and you want to be sure to get your deposit back, we advise that you do two things:

- Clean the place thoroughly. This doesn't normally mean you have to shampoo rugs, dry-clean the drapes, or wash the ceiling. A good thorough cleaning, including the refrigerator, stove, bathroom fixtures, and so on, should be adequate.
- Carefully document your cleaning work through pictures, witnesses, and so on. (See "Avoiding Deposit Problems," below.)

Another area of tenant-landlord disputes over the return of deposits has to do with damages to the premises. Some landlords try to charge tenants for everything from a worn spot on a hall rug to faded paint to missing lightbulbs. The tenant is not responsible for any damage or wear and tear done to the premises by an earlier tenant. (CC § 1950.5(e).)

TIP

Document the condition of your unit before you move in. This can be done in any number of ways. First, you can use the Landlord/Tenant checklist provided in Appendix C. Even if the landlord does not do the walk-through with you, you can do it yourself and send the landlord a copy. Second, you can take photos or videos to document the conditions (be sure they are date-stamped). Sometimes you do not notice certain conditions until after you've moved into the unit. When you do, be sure to notify the landlord, either by letter or email.

Landlord's Duty to Return Deposits

Within three weeks after you move out—whether voluntarily, by abandonment, or by eviction—the landlord must do one of two things:

1. return all of your deposit via first-class mail (or electronic transfer to your bank account if you agree in writing), or
2. give you personally or by first-class mail (or by email, if you agree in writing) an "itemized statement" in writing saying why the landlord is retaining part or all of the deposit, including receipts for work done and

items purchased, if the amount is $125 or more, and return any remaining part to you.

Tenants whose tenancies began on or after January 1, 2003 have the right to a pre-move-out inspection of their rental, when they can learn of intended deductions for damage or uncleanliness. (Tenants whose tenancies are terminated or who are evicted because of misconduct do not have this right.) You'll have an opportunity to remedy the problems before the final inspection. Here's how this works: Within a reasonable time after either you or the landlord notify the other of the end of your tenancy, the landlord must tell you in writing of your right to be present at an initial inspection, which must take place (if you request it) no sooner than two weeks before the end of the tenancy. You and the landlord should schedule the inspection at a mutually convenient time, and the landlord must give you 48 hours' notice of the inspection if you haven't agreed upon a time but you still want the inspection. (The two of you can forgo the 48 hours' notice if you both agree.)

Based upon the inspection, the landlord must give you an itemized statement of intended deductions, plus a copy of Civil Code Sections 1950.5(b)(1) through 1950.5(b)(4) and 1950.5(d). If you're not present at the inspection, the landlord should leave the list in the unit. You can remedy the problems as long as you don't violate any "no alterations" clause in your lease or rental agreement—for example, you can certainly do more cleaning, but if there's a deduction for damage that will require major work (such as repairing sheetrock or electrical items), you may need to ask permission first.

The landlord will reinspect when you leave, and must give you another itemized statement of deductions within three weeks after you've vacated. The landlord must also include copies of receipts for work (labor and materials) to clean the rental unit or replace or repair damaged items if the total charges exceed $125. If the landlord or an employee of the landlord did the work, the statement must include the time spent and the reasonable hourly rate charged. Landlords who cannot complete the work within the three-week period, or who do not have the necessary receipts, may deduct a good faith estimate of the charges, but must supply the receipts within 14 days of receiving them. You can waive your rights under these new provisions in writing, but you may rescind (take back) that waiver if you do so within 14 days after receiving the itemized statement of deductions. (CC § 1950.5(g).) If your efforts to fix or clean don't measure up, the landlord can still charge you. If you disagree, you'll be in the same position as anyone fighting a security deposit deduction—you'll argue that it's "clean enough" and the landlord will argue otherwise. The landlord can also charge you for damage or uncleanliness that crops up after the initial inspection. (CC § 1950.5.)

If a landlord fails to return your security deposit within the three weeks or doesn't otherwise follow the legal steps for itemization and return, you won't necessarily get the entire deposit back. That's because a landlord can argue in court that, despite his failure to follow correct procedures, you do owe back rent or have damaged the premises. He can ask the judge to "set off" these amounts against the security deposit. To defeat the landlord's claim of set-off, you'll have to convince the judge that the landlord waited too long to bring these charges up, or that it would be fundamentally unfair to allow him a "second chance" to dip into your security deposit. (*Granberry v. Islay Investments,* 38 Cal. Rptr.2d 650, 9 Cal.4th 738 (1995).)

If the landlord's illegal use or tardy return of your deposit was done in "bad faith," however, a judge may not only not disallow a set-off, but may impose a penalty of up to twice the security deposit as well (you get the penalty). "Bad faith" is hard to pin down, but it involves at least more than simple carelessness or ignorance of the law. Landlords who knowingly break the law, especially those who do so repeatedly, come much closer to acting in "bad faith."

TIP

When two or more cotenants rent under the same rental agreement or lease, the landlord does not have to return or account for any of the deposit until all of the tenants leave. If you move out early, however, your landlord might voluntarily work out an appropriate agreement and return your share of the security deposit. If not, you should try to work things out with the remaining tenants (or a new roommate, if there is one).

Effect of Sale of Premises on Security Deposits

A landlord who sells the building is supposed to do one of two things: return the deposit to the tenant, or transfer it to the new owner. (CC § 1950.5(i).)

It's been known to happen, however, that the landlord does neither but walks off with the money. The tenant often never knows of this. In fact, the tenant usually doesn't even know the building was sold until sometime later. But the new owner cannot require the tenant to replace any security deposit kept by the old landlord. (CC § 1950.5(j).)

The law requires the new owner to get all security deposits from the old landlord. Whether the new owner does so or not, that person becomes responsible for returning the security deposit to the tenant at the end of the tenancy, just as if the new owner were the old landlord. (CC § 1950.5(j).)

Effect of Foreclosure on Security Deposits

The wave of foreclosures that began in 2007 affected many tenants' homes. Under prior law, a foreclosure would wipe out almost all lease and rental agreements. Now, the foreclosing bank or purchaser must honor existing agreements, and give you 90 days' notice if they want to terminate your tenancy. If you are on a fixed-term lease, it should remain in effect, except in those situations that are discussed in Chapter 14, "Your Rights if Your Building is Foreclosed Upon."

Unfortunately, the defaulting owners often disappeared without returning the security deposit. And banks, often eager to get remaining tenants off the property so that they can sell vacant homes, offered tenants "cash for keys" to leave peaceably—but the cash being offered seldom provided for the additional return of the deposit.

Legally, the new owner, bank or otherwise, is subject to the same deposit rules as described just above, when the rental property is voluntarily sold (these rules apply when rental property is sold "whether by sale, assignment, death, appointment of receiver *or otherwise*." (CC § 1950.5(h), italics added.) If your rental was foreclosed and is now owned by a bank or an investor, these new owners must account for and return the deposit as required by law, regardless of whether the defaulting owner turned the deposit over to the deed or mortgage holder before the foreclosure. If they fail to do so, your recourse is to go to small claims court, as described later in this chapter.

May the Landlord Increase the Security Deposit?

Tenants often ask if it's legal for a landlord to raise their security deposits after they move in. It depends.

If you have a fixed-term lease (for example, a lease for a year) and the deposit is currently less than the legal limit, the landlord may not raise the security deposit during that year unless the lease allows this.

- If you have a rental agreement and the security deposit and other fees already add up to twice the monthly rent (if the place is unfurnished) or three times the monthly rent (if the place is furnished), the security deposit may not be increased.
- If neither of these two situations describes you and you are a month-to-month tenant, then the landlord may force you to pay an

additional security deposit—if she does it right. (The total may not exceed two months' rent.) To legally raise a deposit, she must give you at least 30 days' written notice of the increase, and she must have it properly "served" on you. This means that she must try to have it handed to you at your residence or place of work; a notice served by mail alone is not legal unless you voluntarily go along with it. (CC § 827; CCP § 1162.) (See "Rent Increase Notices" in Chapter 3 regarding the law on how the landlord may change terms of a tenancy.)

Avoiding Deposit Problems

Problems involving security deposits often arise like this:

- The tenant moves out.
- The landlord keeps all or part of the deposit on the grounds of damage or lack of cleaning.
- The tenant says that the place was left in good condition.

If tenant and landlord can't reach a compromise, the tenant will probably sue the landlord for the money withheld, leaving it up to the judge to decide who is telling the truth. For both sides, this is a pretty risky, messy, and time-consuming way of handling things.

The best way to try to prevent this from happening is to arrange to meet with the landlord or manager before you've moved your belongings out and after you've cleaned up. Be sure to take advantage of your right to a pre-move-out inspection, as explained above. Tour the apartment together and check for any damage, dirt, and so on. Then remedy any uncleanliness or repairs that the landlord has noted.

Your landlord should schedule a final inspection. Assuming you made out a list of damage already there when you moved in (see "The Landlord-Tenant Checklist" in Chapter 1), pull it out now and check it against the present condition of the place. Hopefully any cleaning or repairs you've done since the pre–move-out inspection will be acknowledged. Try to work out any disputes on the spot and ask the landlord to give you the security deposit before you leave. Be reasonable, and be willing to compromise. It is better to give up a few dollars for some questionable damage than to have to sue for the whole deposit later.

If you cannot get the landlord to meet with you when you leave, then make your own tour. Bring at least one witness (a person who helped clean often would make a very convincing witness), take some photos, and keep all your receipts for cleaning and repair materials, so you will be ready to prove your case if you later have to sue in small claims court in order to get your deposit back. (Remember, after you're out, it is usually too late to come back to take pictures.)

When the Landlord Won't Return Your Deposit

Let's assume that three weeks have passed since the day you moved out and you have received neither your deposit nor an itemization of what it was used for. It's time to take action. We suggest the following step-by-step approach.

Step 1. Make a Formal Demand

If you feel that your landlord has improperly kept your deposit, the first thing you should do is ask for it in writing. Here is a sample demand letter.

Step 2. Consider Compromise

If the landlord offers to meet you or offers a compromise settlement, try to meet the landlord halfway, but don't go overboard. After all, a law requiring that your deposits be returned if you leave a rental property in the same level of cleanliness it had when you moved in and undamaged but for reasonable wear and tear is there to protect you. You might suggest that the dispute be mediated.

Sample Letter Demanding Security Deposit

1504 Oak Street #2
Cloverdale, CA 00000
November 21, 20xx

Smith Realty Co.
10 Jones Street 00000
Cloverdale, CA

As you know, until October 31, 20xx, I resided in Apartment #4 at 1500 Acorn Street and regularly paid my rent to your office. When I moved out, I left the unit cleaner than it was when I moved in.

As of today, I have received neither my $1,200 security deposit nor any accounting from you for that money. Please be aware that I know about my rights under California Civil Code Sec. 1950.5, and that if I do not receive my money within the next week, I will regard the retention of these deposits as showing bad faith on your part and shall sue you not only for the $1,200 in deposits, but also for twice that amount, as allowed by Sec. 1950.5 of the Civil Code.

May I hear from you promptly?

Very truly yours,
Leon Hernandez
Leon Hernandez

Many cities, counties, and nonprofit organizations such as San Francisco's Community Boards, offer tenant-landlord mediation services designed to help you and the landlord arrive at a mutually satisfactory settlement.

Step 3. Sue in Small Claims Court

If the formal demand doesn't work and there is no reasonable prospect of compromise, consider suing the landlord in small claims court. If you rent under a lease or rental agreement that provides for the landlord's attorney fees, then you, too, are entitled to attorney fees if you win your lawsuit and obtain a judgment against the landlord. (CC § 1717.) You do not get attorney's fees, however, if you settle or the case is dismissed—even if the outcome is favorable to you.) In such situations, though you cannot bring a lawyer to small claims court, you might ask an attorney to help you prepare the case.

And if the landlord has acted in bad faith in keeping your security deposit, the landlord may be liable for up to twice the amount of the deposit in statutory damages. (CC § 1950.5(1).)

Investigate Your Landlord

If you suspect that your landlord has a practice of holding onto security deposits, consider investigating whether his previous activities have landed him in court, sued by prior tenants. Most courts provide online access to court filings. If the information is not available online, you will have to go to the courthouse to get the information.

Court filings are organized both by name and by case number. Type in the landlord's name to see what, if any, lawsuits have been filed against him. If you can, look at the complaint to see what the case was about, and get the names of the person (the plaintiff) suing the landlord and/or the plaintiff's attorney. It might also prove fruitful to track down any former tenants of your unit or of units in the building, to ask about particulars of their cases.

If you find that your landlord is a frequent defendant, chances are that he's known among the judges as such, which is a good thing for you. But whether, and to what extent, you can get evidence of his past transgressions before the judge in your case is hard to say. Experienced lawyers have ways of getting such evidence before the court—and in trying to keep it out.

The rules governing small claims proceedings are contained in the Code of Civil Procedure, beginning with Section 116. The cost for filing papers and serving the landlord will be modest. The best source of information on how to prepare and present a small claims court case and collect money if you win is *Everybody's Guide to Small Claims Court in California,* by Ralph Warner (Nolo),

which devotes a chapter to tenant-landlord cases, including how to prepare and present a deposit case.

To sue your landlord in small claims court, go to your local courthouse (there may be more than one, so call first to make sure you go to the right place) and find the clerk of the small claims court. The clerk is required by law to help you fill out the papers necessary to sue your landlord.

On the court form, state how much you are claiming the landlord owes you. This amount cannot exceed $10,000. You figure the amount you want to claim by asking for the total deposit, less anything that should reasonably be withheld for unpaid rent, damage, or dirty conditions. Add up to twice the amount of the deposit in "punitive damages" if you believe the landlord's failure to return your deposit (or reasonably itemize expenses) constitutes bad faith. If this adds up to more than $10,000, then you either have to waive the excess over $10,000 or else not use the small claims court. If you have to decide between suing in small claims court or in regular court (for an amount more than $10,000, consider that you may not easily win the full punitive damages.

If your rental agreement is oral, you must file your lawsuit against the landlord within two years after the three weeks (for the landlord to return your deposit) run out. (CCP § 339.5.) If you have a written lease, you have four years in which to file. (CCP §§ 337(1), 337.2, 343.) However, whether the agreement is written or oral, we advise you not to wait, but to file promptly. Judges are just not very sympathetic to old disputes.

After you file the form with the small claims clerk, the clerk will normally send a copy of it to the landlord by certified mail, with an order to appear in court for a trial on the suit at a certain date and time. To find out that date and time, ask the clerk. That date must be not less than 20 nor more than 70 days after the date of the order to appear. (CCP § 116.330.) If the landlord does not sign for the certified mail notice, you will have to arrange for a new court date and arrange to have the papers served by personal service.

Small claims court trials are very informal. No lawyers are present, and there are no formal rules of evidence. There is no jury. When you come to court for your hearing, bring the file or envelope with your records. All papers or pictures that you believe help your case should be included, such as a copy of your lease or rental agreement. Also bring with you all witnesses who have first-hand information about the facts in dispute, especially any people who helped in the cleanup. If you do not have any experience with a court, you can go down a day or two before and watch a few cases. You will see that it is a very simple procedure.

TIP

If you cannot speak English and cannot find a volunteer interpreter or afford to hire an interpreter, the court will probably be able to arrange for a volunteer for you. Have a friend call the clerk about this in advance.

On the day your case is to be heard, get to the court a little early and check for your courtroom (referred to as a "department"). Tell the clerk or bailiff that you are present and sit down and wait until your case is called. When your turn comes, stand at the large table at the front of the room and tell the judge clearly what is in dispute. Remember, the judge hears many cases every day, and she will not be particularly excited by yours. If you are long-winded, she may stop listening and start thinking about what she is going to eat for lunch.

Start your presentation with the problem (for example, "Lester Landlord has failed to return to me $1,000 in security deposits in the six weeks since I moved out of his house at 222 Spring Street"), and then present the directly relevant facts that explain why you should win (for example, "The house was clean and undamaged, and my rent was paid in full"). Again, be brief and to the point—don't ramble. You may show pictures and documents to the judge. When you are done with your oral presentation, tell the judge you have witnesses who want to testify.

The landlord will also have a chance to tell his side. You can expect it to be very different from yours, but stay cool! When he is done, you may ask him questions if you feel that he has not told the truth or if he has left some things out. But often asking the landlord a lot of vague questions just gives him more opportunity to tell his side of the case. It is especially important not to argue with the landlord or any of his witnesses—just get your facts out and back them up with convincing evidence.

In a case where a landlord has not returned your cleaning deposit after you have moved out and asked for it, you might present your case something like this:

"Good morning, Your Honor. My name is Susan Smit and I now live at 2330 Jones Street. From January 1, 2007 until July 1, 2013, I lived at 1500 Williams Street in a building owned by the Jefferson Realty Company. When I moved out, the Realty Company refused to refund my $1,200 cleaning deposit even though I left the place spotless. I carefully cleaned the rugs, washed and waxed the kitchen and bathroom floors, washed the inside of the cupboards, and washed the windows. Your Honor, I want to show you some pictures that were taken of my apartment the day I moved out. *(If you completed a checklist of the condition of the premises, you will want to show it to the judge at this time.)* These were taken by Mrs. Edna Jackson, who is here today and will testify. Your Honor, I don't have much else to say, except that in addition to the amount of my deposit, I am asking for the full $2,400 in statutory damages (twice the amount of my deposit) allowed by law. I am entitled to these damages because I believe the landlord has acted in bad faith and had no reason at all to withhold my deposits."

If your landlord failed to alert you to your right to a pre–move-out inspection and is now deducting for cleanliness issues or damages, you will be at an advantage if you can plausibly argue that, had you been afforded the opportunity to remedy these issues, you could (and would) have done so. For example, suppose you're being charged for failing to wax the kitchen floor (which was otherwise clean). You can argue that, had you known of this requirement, it would have been easy for you to comply, and that the landlord should not be allowed to charge you for a task you would have done.

In most courts, your witnesses do not take the witness stand, but remain at the table in front of the judge and simply explain what they know about the dispute. Typical testimony might go like this:

"Good morning, Your Honor. My name is Mrs. Edna Jackson and I live at 1498 Williams Street. On July 1, 2013, when the plaintiff moved out, I helped her move and clean up. The place was very clean when we finished. And just to show how clean it was, I took the pictures that you were just shown. I'm sure those are the pictures I took because I signed and dated them on the back after they were developed."

Step 4. Call the District Attorney

If your landlord has a habit of refusing to return security deposits to tenants, your local district attorney might bring a civil action for fines and an injunction requiring the landlord to return the deposit. (CC § 1950.5(m).)

Rent Withholding as a Way to Get Deposits Back in Advance

Suppose, after you move in, you learn from other tenants that your landlord has a tendency to cheat tenants out of their security deposits—perhaps by inventing or exaggerating a need for repairs or cleaning after they move out. When you decide to leave, you fear the same sort of trouble and you'd rather not deal with the risk and hassle of suing the landlord in small claims court.

There is a way to handle this problem that many tenants use: A month or two before you leave, tell the landlord that you are not making your usual rent payment, and that she should keep your deposit and apply it to the rent.

Your letter might look like the sample below.

Sample Letter Requesting Landlord to Apply Deposit to Last Month's Rent

1500 Acorn Street #4
Cloverdale, CA 00000

September 15, 20xx

Smith Realty Co.
10 Jones Street
Cloverdale, CA 00000

Dear Sirs:

As you know, I occupy Apartment #4 at 1500 Acorn Street and regularly pay rent to your office once a month.

Please take note that this is a formal written notice of my intention to vacate Apartment #4 on October 31, 20xx.

In speaking to other tenants in this area, I have learned that from time to time the return of cleaning deposits has been the subject of dispute between you and your tenants. Accordingly, I have decided on the following course of action: Instead of sending you the normal $1,200 rent payment today, I am sending you $400 and ask that you apply the $800 cleaning deposit to my last month's rent.

I will leave the apartment spotless and undamaged so that you will suffer no damage whatsoever. If you should doubt this or want to discuss the matter further, please give me a call and come over. I think that you will be satisfied that I am dealing with you honestly and in good faith and that the apartment, which is clean and in perfect repair now, will be in the same condition when I leave.

Very truly yours,
Leon Hernandez
Leon Hernandez

This type of "rent withholding" is not legal. You have no legal right to compel the landlord to apply your deposit to unpaid rent, and if you do not pay your rent on time, the landlord can serve you with a three-day notice (ordering you to pay the rent or get out in three days). If you do not comply with such a notice, however, it is very unlikely that the landlord will follow it up with a suit to evict you for nonpayment of rent. (The landlord cannot simply lock you out.) It would probably take at least a few weeks to bring a case to trial, and the landlord knows you plan to leave soon, anyway.

Nevertheless, we do not recommend that you use this rent withholding device against a landlord unless you are pretty sure that you're dealing with someone who cheats on security deposits. The fair landlord has a legitimate right and need to get the rent on time and to keep the security deposit until it's clear that the tenant has left the place in good shape. And if you need a good reference from a landlord who's been manipulated by you, forget it.

Interest on Security Deposits

As a matter of fairness, the landlord should pay you interest on your security deposit. It is your money—not his—and he is merely holding it for you. He should put it into some type of interest-bearing account and pay the interest to you. Unfortunately, no state law says that landlords must pay interest on security deposits.

Form leases and rental agreements customarily used by landlords do not typically require them to pay interest on your security deposit.

A few local ordinances, including those of Hayward, Los Angeles, San Francisco, Santa Monica, and Santa Cruz, require payment of interest on security deposits. Most of these are also rent control cities. (For details, see "Cities Requiring Interest or Separate Accounts for Security Deposits," below.)

Cities Requiring Interest or Separate Accounts for Security Deposits

City	Ordinance	Interest-Bearing Acct	Payments During Tenancy	Notes
Berkeley	Municipal Code § 13.76.070	Not required.	Landlord must pay interest equal to the 12-month average of six-month certificates of deposit, as determined by the Rent Board each November, with interest to be paid or credited each December. (Rent Board website shows ongoing 12-month interest-rate average applicable in other months, for tenant move-outs.) If interest not credited by January 10, tenant may, after notice to the landlord, compute the interest at 10% and deduct this from the next rent payment.	www.ci.berkeley.ca/rent
Hayward	Ordinance 83-023, § 13	Not required.	Landlord must pay interest on deposits held over a year, with payments made within 20 days of tenant's move-in "anniversary date" each year, and when deposit refunded at end of tenancy. Rate is set annually by city.	Violation can subject landlord to liability for three times the amount of unpaid interest owed.
Los Angeles	Municipal Code § 151.06.02	Not required.	Landlord must pay interest on deposits once a year and when deposit is refunded at end of tenancy, either directly or through rent credit. Rate is set annually by Rent Adjustment Commission.	
San Francisco	Administrative Code, §§ 49.1–49.5 (Not part of city's rent control law.)	Not required.	Landlord must pay interest on deposits held over a year, with payments made on tenant's move-in "anniversary date" each year, and when deposit refunded at end of tenancy. Rate is set annually by Rent Board.	Ordinance does not apply to government-subsidized housing but may apply in other situations, even though property not subject to rent control.
Santa Cruz	Municipal Code §§ 21.02.010–21.02.100	Not required.	Landlord must pay interest as set by resolution of the city council on deposits held over a year, with payments made on tenant's move-in "anniversary date" each year, and when deposit refunded at end of tenancy.	Santa Cruz has no rent control law.
Santa Monica	City Charter Article XVIII, § 1803(s)	Required. Account must be insured by FSLIC or FDIC.	Landlord must pay interest produced on deposits held for one year or more, each year by October 1, either directly or through rent credit.	Landlord cannot raise deposit during tenancy, even if rent is raised, unless tenant agrees.
Watsonville	Municipal Code §§ 5.40.01–5.40.08	Not required.	On deposits held over six months, landlord must pay interest or credit against rent. Payment or rent credit is due on January 1 and when deposit refunded at end of tenancy. Rate is set annually by city.	Watsonville has no rent control law.
West Hollywood	Municipal Code § 17.32.020	Not required.	Landlord must pay interest on deposits, with payments made or credit against rent in January or February of each year, and when deposit refunded at end of tenancy. Rate is set annually by city.	

Last Month's Rent

Many landlords require some payment for "last month's rent." The legal effect of such a requirement should depend largely upon the exact language used in the lease or rental agreement.

If the lease or rental agreement says "security for last month's rent," or has a heading called "Security" and then lists "last month's rent" as one of the items on the list, then you have not actually paid the last month's rent, but just provided security for it. So, if the landlord legally raises the rent before you move out, you must pay the difference between the final rent and your security for last month's rent. For example, suppose when you moved in the monthly rent was $1,300, and the rental agreement said, "Security: … last month's rent: $1,300." After two years, the rent has been raised to $1,500, and the tenant leaves. The tenant owes the landlord the $200 difference for the last month's rent.

If, however, the lease or rental agreement does not say that the payment is for security, but simply says "last month's rent: $1,300," then, in our opinion, the tenant has paid the last month's rent—well in advance of the last month. This money is not a security payment—it's an advance payment of the last month's rent. The landlord does not hold it as a trustee for the tenant, and a rent increase later on will not affect the amount of the last month's rent, which the tenant has already paid. So, in the above example, the tenant would not owe an additional $200 to the landlord.

Despite this commonsense approach, some judges are inclined to rule that the tenant must pay the extra $200. If the rental agreement is unclear as to whether this payment is intended as security, point out to the judge that since the landlord provided the form agreement, by law any ambiguities should be resolved against the writer (the landlord). (CC § 1654.)

When Your Landlord Demands More Money

If your landlord claims, after you have moved out, that your security deposit is not sufficient to cover cleaning or repair costs or unpaid rent, your landlord may:

- negotiate with you directly to collect the amount in dispute
- hire a collection agency to try to collect from you, or
- sue you in small claims court.

Negotiating

Your landlord will likely send you an itemized statement with a balance due at the bottom within three weeks after you move out. If you believe your landlord has a legitimate beef, you might want to negotiate at this point. You may be able to negotiate a payment arrangement that is agreeable to you and to your landlord if you are having financial difficulties. If you wait until your landlord has expended more time and energy trying to collect from you, your landlord may not be as willing to accommodate your needs.

Hiring a Collection Agency

Your landlord may hire a collection agency to try to collect from you. If you are contacted by a collection agency, don't panic. You still have rights despite the seriousness of the debt or what the collection agency tells you in its effort to intimidate you. For a detailed discussion of what to do when the bill collector calls, see *Solve Your Money Troubles: Strategies to Get Out of Debt and Stay That Way,* by Robin Leonard (Nolo).

Small Claims Court

Finally, your landlord may try to sue you in small claims court.

If that happens, you will first receive a copy of the landlord's Claim of Plaintiff form, which sets forth the reasons your former landlord is suing you and for how much. The form should also specify a hearing date. You are entitled to receive service of the Claim of Plaintiff form at least 15 days before the date of the court hearing if you are served within the county in which the courthouse is located. If you are served in a county other than the one where the hearing is to take place, you must be served at least 20 days before the hearing date. (CCP § 116.340(b).)

If you believe you have a claim against the landlord, you can file a "counterclaim" with the court. (CCP § 116.360.) You are required to serve your counterclaim no less than five days before the hearing. If you believe that your claim against the landlord is worth more than $10,000, then you may file an action in Superior Court and request that the landlord's Small Claims matter be transferred to the higher court. (CCP § 116.390.)

You do not need to file any papers to defend a case in small claims court. You just show up on the date and at the time indicated, ready to tell your side of the story. Take as many of the following items of evidence as possible:

- Two copies of the Landlord-Tenant Checklist, which you should have filled out with the landlord when you first moved in and again when you moved out. (See Chapter 1.) This evidence is especially important if the Checklist shows that the premises were dirty or damaged when you moved in or that the premises were clean and undamaged when you moved out.
- Photos or a video of the premises before you moved in.
- Photos or videos or notes of the condition of the unit at the pre–move-out inspection.
- Photos or a video of the premises on the day that you moved out, which show that they were clean and undamaged.
- Receipts for professional cleaning of items such as carpets or drapes, or for any repairs that you paid for before moving out.
- One or two witnesses who were familiar with your residence and are willing to testify that the place was clean and undamaged when you moved out. People who helped you clean up or move out are particularly helpful.

CHAPTER 14

Overview of Evictions and Tenancy Terminations

The next two chapters discuss the process that a landlord has to go through in order to legally evict you from your home. This is the only way a landlord can legally get you out. For instance, the landlord cannot just tell you to move, throw your belongings on the street, change the locks, cut off your utilities, or harass you out. A landlord who does any of these things could face serious legal consequences.

A legal eviction has two phases. The first, covered in this chapter, discusses how a tenancy legally terminates (ends) and some (but not all) of the protections that you may have. It's only after a tenancy is properly terminated, that a landlord can proceed with the second phase, which is an eviction lawsuit. While these two phases can take a month or several months to complete, we suggest that you acquaint yourself with your rights and remedies as soon as you get a hint that your landlord might be trying to get you out.

Illegal Self-Help Evictions

The most basic thing a tenant should know is that California law clearly states that when landlords wish to evict a tenant, they must first go to court, giving the tenant prior notice of the court proceedings. Civil Code Section 789.3 was enacted specifically to address some self-help eviction practices. We'll look at these practices next.

Utility Cutoffs

Any landlord who causes any utility service (including water, heat, light, electricity, gas, telephone, elevator, or refrigeration) to be cut off with intent to terminate a tenant's occupancy is liable to the tenant for certain damages. (CC § 789.3.) This law applies whether the utilities are paid for by the landlord or the tenant, and whether the landlord cuts off the utilities directly or indirectly—for example, by not paying the utility bill.

The tenant may sue the landlord and recover the following amounts:

- actual losses, including such things as meat spoiling in the refrigerator after the electricity is turned off or motel bills if the tenant has to find a temporary place to live
- statutory damages of up to $100 for each day or part thereof that a utility was turned off (but not less than $250 in statutory damages for each separate violation)
- a reasonable attorney fee, and
- a court order compelling the landlord to turn on the utilities.

You can bring your suit in small claims court (for up to $10,000) or sue in superior court, if you want to sue for more money.

Tenants can also sue for mental anguish if the landlord's acts were especially outrageous. For example, a jury awarded 23 tenants of a San Francisco residential hotel $1.48 million from their landlord. The landlord had cut off water, entered tenants' rooms without notice, and threatened the tenants, most of whom were elderly or disabled. (*Balmoral Hotel Tenants Association v. Lee,* 226 Cal. App.3d 686, 276 Cal.Rptr. 640 (1990).)

Lockouts

If the landlord changes your locks, removes outside doors or windows, or removes your personal property from your home with the intention of terminating your tenancy, the landlord is in violation of state law. (CC § 789.3.) The damages are the same as set out above for utility cutoffs. You can sue for damages in small claims court, but if you want quick action to get back into your home, see a lawyer, because this law allows you to collect attorney fees.

You might also call the police or district attorney, because these acts are crimes (forcible entry, malicious mischief, and unauthorized entry). Even if the police won't arrest the landlord, they might persuade the landlord to let you in. Ask the police to write a report on the incident; it might help you in a later lawsuit against the landlord.

Tenants who live in residential hotels (apartment buildings that are called hotels) for more

than 30 days are also protected against lockouts. (CCP § 1159; CC § 1940.)

Overview of Eviction Procedure

As we've explained, the legal process for eviction begins with terminating the tenancy. The landlord can begin formal eviction proceedings in court only after the tenant has refused to move, after the landlord has properly terminated the tenancy. This court action is called an "unlawful detainer" (that is, the tenant is unlawfully detaining, or remaining, on the premises after termination of tenancy). The Court process is a "summary," or very quick, proceeding. Even though tenants have all substantive and procedural rights in these actions, they move very quickly through the court.

Termination of Tenancy

Tenancy terminations can happen in one of four ways:

- You have a fixed-term lease that has expired and the lease has not been renewed.
- You have received a three-day notice because of a lease violation.
- You receive a 30-, 60- or 90-day notice terminating your tenancy, or
- You have given the landlord a 30-day notice stating that you are moving out.

Here we explain some, but not all of the legal requirements related to the proper termination of a tenancy.

The Summons and Complaint

If you have not moved out when the notice period runs out, the landlord may file a Complaint–Unlawful Detainer against you in court. Filing a Complaint begins a lawsuit. The landlord will then have a copy of the Complaint served on you, together with another document called a Summons–Unlawful Detainer. The Summons will tell you that you have five days to file a formal written response with the court.

Your Response

If you don't respond to the court, in proper written form and within the time allowed, the landlord may ask the court for a default judgment against you. That means you lose without a trial.

If you choose to respond, you have several options (all described in Chapter 15):

- If the Summons was not properly served on you, consider filing a Motion to Quash Service of Summons.
- If the Complaint is not in proper technical form or does not properly allege the landlord's right to evict you, consider filing a Demurrer.
- You may simply file an "Answer," which is a written response that denies allegations of the complaint and also raises defenses such as violation of the rent control ordinance, retaliation, and discrimination. An Answer may be your first response, or a response that you would make if you lose a Motion to Quash or Demurrer.
- Settlement can happen at any time during the legal proceeding, sometimes even after a trial. Courts often schedule meetings for the purpose of settlement, but you or your representative can talk with the other side about resolving the case at any time.

Trial

After you file your Answer, the case will go to trial. However, it could be decided by a judge (without taking evidence or hearing live witnesses) if the landlord makes a "summary judgment" motion. If the landlord doesn't file this kind of motion and the case doesn't settle, the trial will be heard by a judge without a jury unless either side demands a jury ahead of time, in writing.

Actual Eviction

If you lose the trial, the landlord will get a "writ of possession" that the sheriff (or marshal) will serve on you. This will give you five days to leave. If you

are not out on the fifth day, the sheriff or marshal will physically throw you out, unless a court grants a temporary stay of the eviction to give you more time to move.

Other remedies may be available if you lose, which will be covered later in this chapter and in Chapter 15.

Termination of Tenancy

In most instances, a landlord will begin the process of termination of tenancy by giving a three-day notice, or a 30-, 60-, or 90-day notice. (The usual exception to the need for a notice is in a situation when a fixed-term lease has expired). Legal requirements for these notices are very technical, so we are going to spend some time explaining them. Why? Because when the landlord doesn't follow them, you may have an opportunity to challenge the process.

One very important principle applies to all notice requirements in eviction cases: Because the landlord is trying to evict you from your home, and because the law gives the landlord special privileges in eviction cases (a quicker lawsuit), the landlord must strictly comply with all of the law's notice requirements. (*Kwok v. Bergren,* 130 Cal. App.3d 596, 599 (1982).) If the landlord makes even a small mistake in a required notice, and/or doesn't serve it properly, the eviction itself might be invalid and the landlord may have to start the process over.

Notice to End a Fixed-Term Lease

When a fixed-term lease expires, you are supposed to move out right away, unless your city has a rent control ordinance that requires the landlord to have just cause to evict you. If you don't move, the landlord may file an eviction lawsuit immediately, without first serving any notice on you.

If you live in a city with a rent control or other ordinance requiring just cause for eviction, expiration of the lease does not by itself justify an eviction. You are entitled to remain unless you are evicted for one of the reasons listed in the ordinance.

If the landlord wants to evict you during the term of your lease for your breach of the lease (such as nonpayment of rent), the landlord will have to serve a notice on you before suing to evict. The notice is normally a three-day notice.

The Three-Day Notice Because of Nonpayment of Rent or Other Tenant Violation

The landlord can serve you with a three-day notice if you or another tenant have violated the terms of your lease or rental agreement. There are basically three types, discussed below.

Three-Day Notice to Pay Rent or Quit

If you fail to pay your rent on time, the landlord must serve a written three-day notice on you before suing to evict you on that ground. The notice must tell you to pay the rent or move in three days. The notice must state the amount of rent you must pay to avoid eviction, and this amount may not be more than what you actually owe in rent. (The three-day notice can ask for less than what you owe, but not more.) For example, late charges, check-bounce, or other fees of any kind, or interest or utility charges are not, in most cases, "rent" for the purpose of a three-day notice to pay rent or quit.

All notices to pay rent or quit are required to include the precise sum due, the name, address, and telephone number of the person to whom payment is to be made, and the days and hours that the person receiving the rent is available to receive the rent. If the person is not available to receive it in person, it can be mailed no later than

day three. (Consider getting a certificate of mailing from the Post Office to document when the rent was sent.) (See CCP § 1161(2).) Some judges also require landlords to include the dates for which the rent is due.

Because rent is almost always due at the beginning of a month, the landlord is entitled to request the total rent for the period for which rent is late, less any partial payments you have made. Thus, if your $850 rent is due on the first of the month, the landlord has the right to ask you in a three-day notice for the entire $850 on the second day of the month. (CCP § 1161(2); *Werner v. Sargeant,* 121 Cal.App.2d 833 (1953).)

If you pay the entire amount stated in the three-day notice (the landlord does not have to accept partial payments) before the end of the three days, the notice is canceled, and you don't have to leave. (CCP § 1161(3).) After three days, the landlord may refuse your money and proceed with the eviction. A landlord who accepts the rent after the three-day period, however, waives the right to evict for the late payment. (*EDC Associates Ltd. v. Gutierrez,* 153 Cal.App.3d 169 (1984).) When a landlord accepts partial payments but still wants to evict you for not paying the whole rent, the landlord must prepare a new three-day notice stating the now-lower, past-due rent amount.

Three-Day Notice to Perform Covenant (Correct Violation) or Quit

If you are accused of violating some other provision of your lease or rental agreement, the three-day notice must tell you to stop the conduct if it's curable. For example, suppose the landlord believes that you have a dog in violation of a lease provision that prohibits pets. The notice must say in effect, "Either get rid of the dog in three days or move out in three days." In all cases, the violation of the lease or rental agreement must be substantial, not minor, in order to justify evicting you from your home. (*McNeece v. Wood,* 204 Cal.280, 285 (1928); CCP § 1161(3).)

Unconditional Three-Day Notice to Quit

For certain violations, the landlord does not have to give you the opportunity to cure. A landlord can serve you with a three-day notice to vacate if the landlord believes that you are committing "waste" (that is, damaging the premises), creating a "nuisance" on the premises (for example, dumping garbage in the backyard or seriously and repeatedly disturbing other tenants or neighbors), or using it for an illegal purpose (such as to sell illegal drugs). In these situations, the notice need not give you the alternative of stopping your misbehavior. (CCP § 1161(4).) The landlord can also give you this kind of three-day notice if you sublet the premises, contrary to a lease or rental agreement provision prohibiting sublets. Subletting in a city with eviction protection may not necessarily trigger an unconditional quit notice. If "illegal subletting" is not a "just cause" for eviction, the landlord would then call it a violation of the lease agreement and would have to provide the opportunity to cure.

How a Three-Day Notice Must Be Served on You and Your Timeline for Responding

To be effective, the three-day notice must be properly served on you. (If there is more than one tenant on a written lease or rental agreement, it is legally sufficient for a landlord to serve just one. (*University of Southern California v. Weiss,* 208 Cal. App.2d 759, 769, 25 Cal.Rptr. 475 (1962).) First, the landlord (or landlord's agent) must try to find you and hand it to you. If the server tries to find you at home and at work but can't, the server may hand it to "a person of suitable age and discretion" at your home or work and also mail a copy to you. If there's no one suitable at your home or work to leave it with, then—and only then—may the server serve it on you by the "nail and mail" method. This involves posting a copy in a conspicuous place on

your premises, such as the front door, and mailing another to you. (CCP § 1162.)

Landlords are often sloppy about following these procedures. It is common, for example, for a landlord to make one attempt to find the tenant at home, and no attempt to find the tenant at work, and then simply nail the notice to the tenant's door and mail a copy. This is not proper service.

Sloppy landlords often fall back on a legal doctrine that states that if the tenant actually receives the notice, it doesn't matter that it wasn't served properly. The theory is that actual receipt of the notice "cures" any defect in service. (*University of Southern California v. Weiss,* 208 Cal.App.2d 759 (1962).) If the case later goes to court, the landlord can prove you received the notice by calling you to the witness stand and asking you. For this reason, it is usually unwise for a tenant who actually received the notice to rely on a landlord's faulty service of notice as a defense.

Counting the Three Days After Service

You have three full days to comply with the demands in a three-day notice. If you do comply, then the landlord may not sue to evict you—unless it's an unconditional Three-Day Notice to Quit.

If you receive an unconditional notice, or don't comply with a three-day notice to pay rent or correct some other violation, the landlord may file a lawsuit on the fourth day (or later).

The date of service is the date you were handed the notice, if you were personally served. If the landlord left the notice with someone else at your home (or office), or posted a copy on the premises and mailed another copy, the date of service is the date the landlord took that action. It doesn't matter that you didn't actually receive the notice until later. (*Walters v. Meyers,* 226 Cal.App.3d. Supp. 15 (1990).)

To count the three days, do the following:

- Ignore the date of service and start counting on the next day.
- If you were served personally, count three days. You must comply witih the notice before the end of the third day.
- If you were served by "nail and mail," count three days. (There used to be some confusion about whether to add an additional five days to account for time in the mail. It is now clear that you are not entitled to the additional five days. (*Losornio v. Motta,* 67 Cal.App.4th 110 (1998).)
- If the third day falls on a Saturday, Sunday, or holiday, you must comply before the end of the next business day.

EXAMPLE 1: You are served with a three-day notice on Wednesday. To count the three days, do not count Wednesday; begin with Thursday. This makes Saturday the third day. But Saturday is a weekend day, and so is Sunday. So the third day is Monday. Therefore, you have until the end of Monday to comply. If the landlord files an eviction lawsuit before Tuesday, it should be thrown out of court if you raise the issue. (See *LaManna v. Vognar,* 17 Cal.App.4th Supp. 1 (1993).) Tenants should raise this issue by filing a Demurrer—see the Demurrer section, in Chapter 15.

EXAMPLE 2: You're served on Friday. Saturday is the first day, Sunday is the second day, and Monday is the third day. Neither of the weekend days extends the three-day period. (But if that Monday happens to be a holiday—like Presidents' Day, Martin Luther King's Day, Memorial Day, Labor Day, or any other holiday—the three-day period is extended to Tuesday.)

The 30-, 60-, or 90-Day Notice to Terminate a Month-to-Month Tenancy

A landlord can serve you with a 30-, 60-, or 90-day notice for "any reason or no reason at all," as long as it isn't an unlawful reason (to discriminate or to retaliate against you for exercising a legal right). This rule has two exceptions:

- in rent control or eviction protection cities, where the landlord has one or more "just

causes" for eviction protections (see Appendix A for rent control and eviction protection cities and rules), and
- in cases where the tenant has a fixed-term lease that has not expired.

To terminate a month-to-month tenancy (for reasons other than nonpayment of rent or breach of a rental agreement or lease term), the landlord must normally serve you with a notice of termination of tenancy, which simply says that you are to get out in 30 or 60 days (or more). (Tenants who have resided continuously in the rental for a year or more are entitled to 60 days' notice; others get 30 days.) The notice need not state why the landlord wants you out, unless a rent control ordinance requires that the notice state just cause to evict (discussed below).

If your landlord receives rent or other payments from the Department of Housing & Urban Development (HUD) or a local or state program (most of which operate as "housing authorities") on your behalf, you are entitled to 90 days' notice, not 30 or 60. (CC § 1954.535; *Wasatch Property Management. v. DeGrate,* 35 Cal.4th 111 (2005).) In addition, the landlord must state the reason for termination on the 90-day notice. And if you are a Section 8 tenant, your landlord cannot give you a 90-day notice until your initial rental term has elapsed. During the 90-day period prior to termination, the landlord cannot increase the rent or otherwise require any subsidized tenant to pay more than he or she paid under the subsidy.

A 30- or 60-day notice is not required if the landlord does not want to renew a tenant's lease. (However, in a rent control or other city that requires "just cause" to evict, mere expiration of a lease is not one of the reasons allowed for eviction. The landlord may evict only if the tenant refuses to sign a similar lease or extension whose terms, including rent, are legal under local and state law.) The tenant is entitled to stay until the end of the lease term, but no longer. However, many landlords use a 30- or 60-day notice near the end of a lease term as a practical way to remind the tenant that the lease is about to expire and will not be renewed.

If your property has been sold at a foreclosure sale (at a "trustee sale"), the new owner must serve you with a 90-day notice to terminate your tenancy. If you live in a city or county with "just cause" for eviction protections—such as a rent control jurisdiction—the new owner can evict only for certain specified reasons. (*Gross v. Superior Court,* 171 Cal.App. 3d 265 (1985).) Your rights after foreclosure sale are discussed in greater detail later in this chapter.

How a 30- or 60-, or 90-Day Notice Must Be Served on You

Here are some key points about 30-, 60-, or 90-day notices:
- A 30-, 60-, or 90-day notice may be served on any day of the month. It need not be served on the first day, the "rent day," or any other day—unless the rental agreement requires it to be served on a certain day.
- It may be served in the same manner as the three-day notice (see above), *or* by certified or registered mail. (CC § 1946.)
- If the last day falls on a Saturday, Sunday, or holiday), you have all day Monday to move if you want it.

CAUTION

Don't rely on an extra five days if you were served by certified mail or "nail and mail." There is some authority for this theory—under CCP § 1013, litigants get an additional five days when they're served by non-personal-service with papers in an ongoing lawsuit. But terminating a tenancy is not part of a lawsuit—the lawsuit (the unlawful detainer case) begins later, and only if the tenant doesn't comply. (*Lorsonio v. Motta,* 67 Cal. App.4th 110 (1998).) So don't rely on this theory.

EXAMPLE: You have a month-to-month tenancy, pay rent on the first, and have lived there for six months. If your landlord serves you with a 30-day notice on June 15, you are supposed to vacate on July 15. But if July 15 falls on a weekend or holiday, the next business day is "moving day."

Withdrawal of a 30-, 60-, or 90-Day Notice

The notice can be withdrawn only if the landlord and tenant agree to nullify it. However, now and then a landlord will accept rent covering a period beyond the 30, 60, or 90 days. When this happens, the legal effect is the withdrawal of the termination. (*E.D.C. Associates v. Guiterrez,* 153 Cal.App.3d 167 (1984).)

EXAMPLE: The landlord serves you with a 30-day notice on June 10, requiring you to move on July 10. Your rent is $1,000 a month, due on the first. On July 1, you pay the usual $1,000 rent. If the landlord accepts it, she has accepted rent for the whole month of July, including the part beyond July 10. By doing so, she has probably impliedly withdrawn the notice.

The 30-, 60-, or 90-Day Notice in Rent Control Cities With Just Cause Requirements

Many local rent control ordinances (including those of Los Angeles, San Francisco, Oakland, Hayward, Berkeley, Beverly Hills, East Palo Alto, Palm Springs, Thousand Oaks, West Hollywood, and Santa Monica) limit the landlord's right to evict. (See Chapter 3 and the Rent Control Chart in Appendix A for more on rent control.) San Diego has its own just cause eviction ordinance, without rent control, for tenants who have lived in their rental units two years or more. The City of Glendale has just cause eviction requirements, also in the absence of rent control provisions. These ordinances require the landlord to have an allowed "just cause" or "good cause" reason to evict, and that a list of acceptable reasons is stated in the ordinance. It does not matter whether the tenant has a month-to-month tenancy or had a fixed-term lease that has expired. The list of specified "just causes" differs for these cities.

Here is a list of common "just cause" reasons:

- **Wrongdoing by the tenant—such as nonpayment of rent or creating a legal nuisance.** As discussed above, a three-day notice is typically used in this situation. Under the ordinances of some cities, including Berkeley, Santa Monica, Los Angeles, and San Francisco, the landlord must first notify the tenant of the alleged lease or rental agreement violations—for example, moving in too many people, damaging the premises, or making too much noise—and give the tenant a chance to correct it. In other types of situations—such as using the premises to sell illegal drugs—the landlord need not give the tenant the alternative of stopping the misbehavior.
- **Tenant refuses to sign a new lease or extension**. In cities with just cause eviction requirements, a landlord cannot evict merely because the tenant's lease has expired, unless the tenant refuses to sign a new lease with similar (and legal) terms at a legal rent.
- **Landlord needs to make major repairs or do large-scale remodeling on the premises.** Under the terms of many ordinances, however, a tenant has the right to move back in after the remodeling is completed, at the original rent plus an extra "pass-through" increase that allows the landlord to recover part of the cost of the improvements.
- **To enable the landlord or landlord's relative to live in the rental unit.** Most just cause ordinances allow landlords to evict in order to move in themselves or have certain close relatives move in, if the landlord has no other comparable vacant units.
- **"Ellis Act" Evictions—the landlord wants to permanently remove the building from residential rental use.** A state law called the Ellis Act (GC § 7060) allows landlords to

get out of the residential rental business. This type of eviction subjects landlords to several requirements, one of which is that the tenant must receive a 120-day notice of termination. And, if the tenant is over 62 years of age or disabled, the landlord must give a year's notice.

Many "just cause" provisions have very detailed requirements. Some, for instance, require landlords to pay moving expenses, others provide for additional grace periods, and many have restrictions on evictions when an owner wants to move into a property. You are strongly encouraged to check with your local rental authorities and obtain a copy of the ordinance and applicable regulations (see Appendix A for contact information).

CAUTION

Some landlords have abused the move-in provision by falsely telling the tenant that the landlord or a relative is going to move in. Later—after the tenant moves out—they rent the place out at a higher rent. If you move out for one of these reasons, be sure to periodically check to see if the landlord does what he stated in the termination notice.

You should continue to pay rent up to and including the last day of the 30-, 60-, or 90- day notice. Otherwise, the landlord can give you a 3-day notice to pay rent or quit. Also, unless the lease describes part of your initial deposit as "last month's rent," you cannot apply your security deposit to rent. One strategy is to continue to pay rent and hope that the landlord accepts rent for beyond the termination date. This would give you a strong defense to any eviction.

Possible Defenses to a Termination Notice

When evaluating how to respond to a termination notice, the first thing you will want to know is, "With each of these possible responses, what are my chances of winning?" Here are some of the most typical defenses that arise in these cases:

- **Is the notice correct?** The three-day or the 30-, 60-, or 90- day notice is the foundation for the landlord's case and almost always the most critical part. Therefore evaluate whether the notice is correct in both form and substance. For instance, did the notice to quit state the correct address to the premises? Did the three-day notice to pay rent state the precise sum due? Was the address to which the rent should be delivered included in the notice to pay rent or quit? Is the alleged breach a "trivial" one or was it substantial?
- **Does the reason for termination comply with "just cause" requirements?** If you live in a jurisdiction that requires a just cause for eviction, determine whether the notice stated a valid reason for eviction and met all the requirements to evict. Sometimes the "just cause" reason has very detailed requirements. Again, you will want to look at the local ordinance and the applicable rules and regulations to help you make this determination.
- **Is the notice retaliatory?** A landlord is not allowed to retaliate (get back at you) because you exercised a right that you have under the law. (CC § 1942.5.) For example, if the landlord is evicting you because you contacted the building inspector, demanded repairs, organized a tenant's union, or exercised some other legal right, you have a strong defense to the eviction. It is the tenant's burden, however, to prove that it is more likely than not that the landlord's reason (motive) for eviction is to retaliate.
- **Is the landlord discriminating?** It is unlawful for a landlord to discriminate because of race, religion, gender, sexual orientation, disability, age, or marital status. (See GC § 12955.) If the tenant can prove that it is more likely than not that the landlord's dominant purpose for eviction is to discriminate, then you have a strong defense to the eviction.
- **Has the landlord accepted rent for a period after the notice expired?** As mentioned just

above, a landlord who accepts rent after the termination of the tenancy "waives" that termination. Thus, if you receive a 60-day notice you have to pay rent up to the 60th day, but if the landlord accepts rent for a period after the 60th day, he may have waived the right to termination. Likewise, if you are being evicted for nonpayment of rent, and pay the rent after the three days, the landlord who accepts the payment waives the right to declare your tenancy terminated. Note that this is different from a scenario wherein you paid rent on the first of the month and on the tenth of the month the landlord gives a three-day notice to cure or quit (for instance, get rid of your dog to comply with a "no pets" clause in your lease). In this situation, the fact that you paid rent to the end of the month does not provide you with a defense (but you may have a "waiver and estoppel" argument, described below).

- **Waiver and estoppel.** Using the example above, sometimes a landlord (or building manager) will give you reason to believe that it's okay to have a dog even when the lease says otherwise. The landlord then accepts rent knowing that you have a dog. It would be unfair to evict under these circumstances. The argument is that the landlord has waived the right to accuse you of a breach and should be estopped (stopped) from proceeding with the eviction. This situation usually boils down to whether or not the landlord actually knew about the pet and then accepted rent, so it's important to identify the evidence you have to prove this.
- **Did the landlord fail to provide habitable premises?** The landlord is obligated under the warranty of habitability, which is impliedly contained in every lease or rental agreement, to comply with building codes, housing codes, and health and safety codes. When the landlord's noncompliance with these standards becomes substantial, the landlord has breached, or broken the lease, thereby excusing payment by the tenant. The duty to provide habitable housing begins when a landlord first rents the unit to you and applies at all times after that. (See the discussion of habitability in Chapters 6 and 7.) Failure to provide habitable premises can be used as a defense to nonpayment of rent cases. Under this defense you are essentially saying that the landlord is charging you full rent but did not provide the full package of housing services required. At trial, the jury will have to determine what the "reasonable rent" for the premises should have been given the conditions. The tenant will then be required to pay the reasonable rent as determined by the jury. If paid within five days of the judgment, the tenant will not have to move. (CCP § 1174.2.)

Your Options After a Three-Day or 30-, 60-, or 90-Day Notice Is Served

If you get a three-day, 30-day, 60-day, or 90-day notice, sit down and think things over. Don't worry—you won't be thrown out on the fourth, 31st, 61st, or 91st day, as the case may be. As we mentioned, the landlord must first sue to evict you, and you must be notified of the lawsuit. Only if you lose the lawsuit can you be evicted, and then only by the sheriff or marshal. Usually, it will take the landlord over a month to finish the lawsuit (longer if you contest it) and, if the landlord wins, get the sheriff or marshal to give you an eviction order.

You have several choices:

- **Comply with the notice**—for example, pay the rent, get rid of the dog, or simply move out. If the landlord is in the right and you are able to comply, this may be the best course. If you do comply, be sure to notify the landlord in writing of your compliance (for instance, send an email stating that you got rid of the dog or

paid the rent). Likewise, if you received a 30-, 60-, or 90- day notice, you have the choice of complying by moving out. The decision whether or not to move out will be influenced by the defenses that you may have if the case goes to court.

- **Negotiate a solution with the landlord**, either by yourself, through a neighborhood or city-sponsored mediation program, or through a lawyer. (See Chapter 18 for a discussion of mediation services.) It will cost the landlord time and money to file an eviction lawsuit, which gives the landlord some incentive to work out a fair deal with you.
- **Let the landlord file an eviction lawsuit.** The discussion above should help you decide your chance of winning. For some, staying may be their only realistic option. The eviction lawsuit will take time and give you a chance to save money to move. You will also have time to discuss settlement during the case. Be aware that if an eviction lawsuit is filed it is a public record and could possibly affect your credit and your ability to rent in the future. However, it is hidden from public view for 60 days. If the case is resolved within 60 days, the case remains hidden. If you win the case, it is permanently "sealed" (hidden from public view). It is also possible to agree in a settlement to have the record "sealed." (CCP § 1161.2.) You may also want to get some advice from a tenants' organization or an experienced tenants' lawyer.

If you decide to fight the eviction, you can represent yourself or hire a lawyer. If your lease or rental agreement requires the loser to pay the winner's attorney fees—and your chances of winning look pretty good—you may well want to do the latter.

If you decide to represent yourself, prepare carefully. The key is to do your homework—both on the law and on the facts. Get your witnesses, receipts, photos, and other evidence lined up, and learn the procedural rules set out in Chapter 15.

Stopping an Eviction by Filing for Bankruptcy

If you file for bankruptcy before the landlord files his eviction lawsuit, the landlord cannot legally file an eviction lawsuit unless he first goes to the Bankruptcy Court and asks for permission to proceed. If the landlord has started an eviction lawsuit but hasn't gotten a judgment for possession of the property (discussed in Chapter 15), the landlord must stop it once you file for bankruptcy, and can proceed only after getting permission from the Bankruptcy Court to go ahead. (11 U.S.C. § 362.) But don't get your hopes up—bankruptcy judges usually grant these requests, and it takes only a week or so if the landlord or the landlord's attorney acts quickly.

If you file for bankruptcy after the landlord has completed the eviction lawsuit and obtained a judgment for possession, but before the sheriff arrives, you are out of luck—the sheriff can go ahead and do his job. However, under very narrow circumstances, you may be able to stop an eviction based on nonpayment of rent when the landlord obtained a judgment before you declared bankruptcy. You'll be able to stop the eviction only if, within 30 days of filing bankruptcy, you (1) file a paper with the Bankruptcy Court certifying that California has a law (CCP § 1179) allowing tenants to avoid eviction (called "relief from forfeiture") by paying unpaid rent (plus court costs and any attorney fees awarded the landlord); (2) deposit that sum with the Bankruptcy Court clerk, plus any rent due 30 days from the date you filed for bankruptcy; and (3) certify to the Bankruptcy Court that you have paid these amounts, serving the landlord (or landlord's attorney) with this certification. The documents must all be in proper legal form.

Landlords can sometimes avoid the automatic bankruptcy stay (proceed with an eviction without asking the court for permission), when the reason for the eviction is the tenant's alleged drug use or damage to the property. In these situations, the

landlord files a certification to that effect with the Bankruptcy Court.

Some nonlawyer eviction defense organizations (primarily in the Los Angeles area) routinely help tenants file for bankruptcy as a means of buying a little more time to find new premises. While the extra time may seem like a minor miracle at the time, we recommend against filing for bankruptcy solely to stave off an eviction. It will hurt your credit rating and may cause you to lose property you wanted to hang on to. However, if other reasons justify filing for bankruptcy, stopping an eviction temporarily may be a beneficial side effect.

RESOURCE

For more information on bankruptcy, see *How to File for Chapter 7 Bankruptcy,* by Stephen Elias and Albin Renauer (Nolo).

Your Rights If Your Building Is Foreclosed Upon

This section deals with the rights of a tenant whose building is foreclosed on, and the property in which you live is now owned by a bank, other lender, or other person or entity that has purchased the property at the foreclosure sale. The information in this section does *not* apply to owners who have suffered foreclosure. It applies only to *tenants* of landlords whose properties were foreclosed by their mortgage lender.

The Effect of Foreclosure

When an owner defaults on a mortgage, the mortgage holder, usually a bank, arranges for the property to be sold at a foreclosure sale. At such sales, the mortgage holder usually winds up owning the property, though sometimes a third-party investor outbids the mortgage holder and winds up with the property.

California tenants living in foreclosed buildings have some protections after the foreclosure proceedings. Tenants on a month-to-month tenancy are entitled to a 90-day notice terminating the tenancy. (CCP § 1161b(a).) In addition, tenants who have leases may be able to assert their leasehold rights and remain until the end of their lease (see below).

TIP

Even though you have a new landlord, that landlord has the same legal obligations that any other landlord has. For example, the new landlord must maintain the property and can't invade your right to privacy. If you live in a rent control jurisdiction, the new owner cannot raise your rent beyond that allowed under the ordinance, and can't evict you for "any reason or no reason at all" if there is a "just cause" for eviction provision that applies.

What Happens When Your Lease Was in Place Before the Foreclosure Sale?

In years past, a foreclosure sale effectively wiped out almost all existing leases. However, this harsh result was changed in 2008 (with CCP § 1161b(b)). Now, if a lease was signed before the foreclosure sale, that lease will remain in effect unless any of the following conditions exist:

- the property is bought at the foreclosure sale by a purchaser who intends to live on the property
- the tenant isn't the spouse, child, or parent of the owner
- the leasing transaction was conducted in an "arms' length" manner, and
- the rent isn't "substantially below" fair market value, except, of course, for government-subsidized tenancies.

If any of these situations exist, the new owner can ignore the lease and proceed with a 90-day notice. However, an existing lease may still be valid if the following conditions are met:

- the lease was recorded in the County Recorder's Office, and
- the lease was recorded before the Deed of Trust (mortgage) that was the basis for the foreclosure was recorded.

This is an extremely rare situation.

If you receive notice that the property in which you live has been foreclosed (that is, a "trustee's sale" has been held), you should stop paying rent to the now-former owner and pay it to the new owner. If you don't know who that is, set aside your rent payment each month, so that you can pay it to the new owner once you find out who that is.

Cash for Keys

To encourage tenants to leave quickly and save on the court costs associated with an eviction, banks offer tenants a cash payout in exchange for their rapid departure. Thinking that they have little choice, many tenants—even protected Section 8 and rent-control tenants—take the deal. To make matters worse, real estate agents who claim to be working for the banks try to pressure tenants to leave, implying such tenants have no rights. Do not be intimidated by real estate agents or banks or their attorneys. Know your rights and stand your ground, unless, of course, a financial offer to move quickly seems like a good deal. Keep in mind that it will cost the bank one to two thousand dollars to evict you and that the process, if you contest the case, could take well over a month.

Under Civil Code Section 1962, any new owner —whether the person becomes owner by foreclosure or regular sale—must advise tenants to whom, where, and how to pay the rent, within 15 days of taking ownership. Failure to do so means that any nonpayment of rent that accrued during such noncompliance can't be used as a basis for eviction—a defense the tenant would assert via Answer (a topic discussed in Chapter 15). If you receive a three-day notice to pay rent or quit from the new owner, you might want to confirm with your county's Recorder's Office—usually located at the county seat—that the person or entity giving you the notice is truly the new owner.

Tenants who live in cities with "just cause" eviction protection are additionally protected from terminations at the hands of an acquiring bank or new owner. These tenants can rely on their city's ordinance's list of allowable reasons for termination. Because a change of ownership, without more, does not justify a termination under the cities' lists of allowable reasons to evict, the fact that the change occurred through foreclosure will not justify a termination. However, a new owner who wants to do an "owner move-in" eviction may do so, as long as the owner complies with the ordinance's procedures.

Responding to Termination Notices After Foreclosure: Tenants With Leases

If the property you rent changes ownership due to a foreclosure, you may receive any one of several different kinds of termination notices (you may even receive two at once). Whether the notice is legally valid, and your proper response to the notice, will depend on a number of factors. You'll need to know, first, whether you have protections under a local rent control or "just cause" for eviction ordinance, or have additional protections under an existing lease agreement. It is often a good idea to notify the new landlord (or that person's attorney) of your status (for example, that you are a tenant, whether or not you have a lease, whether or not you are protected by "just cause" or rent control ordinances). Remember, banks usually prefer to have their properties vacant so that they can sell them, but you are not obliged to move unless they follow the proper procedures for eviction.

Why a Three-Day and a 90-Day Notice?

Some banks send tenants both a three-day and a 90-day notice, particularly in the case of single-family properties. Here's why: When owners *who also live on the property* default, they can properly be told to move with a three-day notice. Many banks don't know, however, whether the residents are tenants or former owners. To cover each possibility, they send two notices. But you're a tenant, not an owner, so the three-day notice is inappropriate.

CHAPTER 15

The Eviction Lawsuit

After reading Chapter 14, you should have a clear idea of what leads up to an eviction lawsuit. This chapter gets into the details that will help you go to court and defend yourself (assuming you choose to fight the eviction). This chapter will also help you understand what your lawyer is doing, if you choose to hire one.

We concentrate on the basic and most commonly used tools suitable for tenants to use in defending against most straightforward eviction proceedings. The material set out here is by no means a complete summary of every defense or litigation device available to a tenant, but it will invaluable for many readers, even those with a complicated defense who end up hiring an attorney.

RESOURCE

Lawyers' eviction resources. You can supplement this information by consulting the *California Eviction Defense Manual*, and *California Landlord-Tenant Practice*, both of which are published by Continuing Education of the Bar (CEB) in Berkeley, California. The *California Eviction Defense Manual* is the source most often used by lawyers when defending unlawful detainer cases. Unlike many law books, it is not difficult to use. You should be able to find both books in your county law library. Be sure you consult the latest supplements to these books, which contain the most recent cases and statutes.

Key Eviction Rule

One very important rule cuts across all other rules in an eviction case: The landlord must strictly comply with all legal requirements. (*Vasey v. California Dance Co.,* 70 Cal.App.3d 742 (1977).) This is the price the landlord pays for a special, quick procedure, and reflects the seriousness of the matter, which seeks to deprive you of your home.

TIP

Time your settlement conversation carefully. Keep in mind the case can settle at any time, although it is usually not a good idea to introduce settlement too early in the proceedings—so you don't appear "too eager" to settle. Be prepared to stand up for yourself. Unfortunately, many lawyers are legal bullies and may try to push you around and intimidate you, but if you hold your ground you change the dynamic and they will eventually have to treat you more civilly. One way to introduce the subject of settlement would be during a discussion about some other issue (like scheduling a hearing or allowing entry to make a repair).

Where Eviction Lawsuits Are Filed

Landlords may not use small claims court to evict a tenant. Eviction lawsuits must be brought in superior court. (CCP §§ 86, 116.220.) More populous counties have "divisions" or "branches" of superior court. The eviction case filed by your landlord will normally be heard in the court or its division nearest the rental property.

An eviction lawsuit is technically called an "unlawful detainer" lawsuit. We use both terms interchangeably, but courts and lawyers almost always use the term "unlawful detainer."

The Complaint and Summons

The Complaint—Unlawful Detainer (or Complaint) is the paper the landlord files in court to get the case going. It states the basic facts that justify eviction and asks the court to order you out and to enter a judgment against you for unpaid rent, court costs, and sometimes attorney fees.

Before you can be evicted, you must receive proper notice of an unlawful detainer suit against you by being named in the Complaint and served with that Complaint, as well as with a Summons—Unlawful Detainer—Eviction (or Summons). The Summons is a notice from the court telling you that you must file a written response (Answer, Demurrer, or Motion to Quash) with the court within five days or lose the lawsuit. The Summons also tells you whether you should give your response to the landlord's attorney or to the landlord. If the Summons and Complaint aren't served on you according to law, you can ask the court to dismiss the lawsuit as explained below.

Both the Complaint and Summons forms are official government forms published by the California Judicial Council.

How the Summons Must Be Served

The landlord cannot get sloppy about service of the Summons and Complaint. Whether or not you actually receive these documents, the landlord's failure to strictly abide by the rules governing their service means that the court has no authority (jurisdiction) to hear the case.

There are two allowable ways to serve a Summons and Complaint: personal service and substituted service. A third method (posting and mailing) requires judicial permission.

Personal Service: The landlord must first attempt personal service of the Summons and Complaint. Someone over the age of 18 who is not a named party to the lawsuit—someone other than the landlord—must personally hand you the papers. (CCP §§ 414.10 and 415.10.) Even if you don't accept the papers, service has properly been made as long as you are personally presented with them. It is a common practice, when people realize they are about to be served, to slam the door in the server's face. Forget it. The server can deposit the papers outside the door (after you slam it) and you will be considered served.

Substituted Service: If several unsuccessful attempts are made to personally serve you (three is the general rule), the server may make substituted service by:

- leaving a copy of the Summons and Complaint with a competent person in your house (this can be someone less than 18 years of age), or with a person over 18 at your business
- explaining the nature of the papers to the person with whom they are left, and
- mailing a copy of the papers to the address where the papers were left. (CCP § 415.20(b).)

"Posting and Mailing" or "Nail and Mail" Service: In limited situations, state law allows the landlord's process server to post copies of the Summons and Complaint on your front door and mail a second set of copies. (CCP § 415.45.) Before a landlord can use posting and mailing, the landlord must get written permission from a judge after showing that the process server made several unsuccessful attempts to serve the papers at reasonable times. If this method of service is used, your time to respond is extended from five to 15 days.

Shortly after the landlord or landlord's lawyer has filed the complaint, the clerk will mail you a notice informing you that an eviction case has been filed. The notice will also give you information about some organizations that provide information and assistance to tenants facing eviction. This is not a Summons and Complaint, but just information that is being provided by the court.

Remember, each named defendant (tenant) must be served with a copy of the Summons and Complaint. You each start counting the five (or 15) days to respond separately, depending on when each defendant was served.

Responding to the Summons

Your first response to the Summons can be one of three documents, each of which is discussed below:

- **Motion to Quash**—if the Summons was not properly served on you or if there was a defect in the summons itself
- **Demurrer**—if the Complaint is not in proper technical form or does not properly allege the landlord's right to evict you, or
- **Answer**—if you want to deny statements in the Complaint or allege new facts.

Tenant Responses Are Not Mutually Exclusive

Responses are not mutually exclusive. So your response could be a Motion to Quash Service of Summons, then (if that were denied by a judge) a Demurrer. If the judge denied ("overruled") the Demurrer, your response could then be an Answer. Or you may simply file an Answer as your response in the first place, which is the most common response. This chapter will help you choose the appropriate response.

CAUTION

Always file a written response to the Complaint, even if you've moved out! Even if you have moved out, you should file a written response (usually an Answer) unless the landlord or landlord's attorney has assured you, preferably in writing, that the eviction will not proceed against you because you have moved out. Ideally, you'll want them to file a dismissal with the court, which will clearly end the case. If you move out but don't file a written response, and the landlord goes ahead and obtains a default judgment, you'll wind up having a judgment for rent that you perhaps do not owe, and for court costs. (You might also owe attorney fees, if your lease or rental agreement has a fees clause.)

Be sure to check your lease or rental agreement for an attorney's fees clause even if you get the landlord to file a dismissal.

Timeline for Filing Response

You have five days to file your written response. You must count Saturdays and Sundays, but not other judicial holidays falling on weekdays. However, if the fifth day is a Saturday or Sunday, you can file your response the next day court is open.

EXAMPLE 1: Teresa is served with a Summons on Tuesday. She counts Wednesday as day 1, Thursday as 2, Friday as 3, Saturday as 4, and Sunday as 5. Because court isn't open on Sunday, she can file her response on Monday.

EXAMPLE 2: Joe is served with a Summons on Wednesday. His five days are over on Monday, too.

EXAMPLE 3: Laura is served with a Summons on Thursday. The next Monday is a court holiday. She counts Friday as day 1, Saturday as 2, Sunday as 3, Tuesday as 4, and Wednesday as 5. Wednesday is her last day to file a response.

You have 15 days (not five) to file a response if substituted service or "posting and mailing" service was used.

Fees to File a Response

If this is your first written response filed with the court, you will have to pay a filing fee. The amount depends on how many defendants there are. It will probably be around $240 per defendant. Call the court clerk (civil division) for information on filing fees in your county. If you win—but not if you settle or the case is dismissed—you will get a judgment for your filing fee against the landlord as "costs."

If you are unable to pay the filing fees, you may apply to have them waived on the basis that your income is low, by filing a Request to Waive Court Fees form. If you receive certain governmental aid (SSI/SSP, CalWORKS, Food Stamps, and/or county general assistance), or if your gross monthly household income is under a certain level (as stated on that form), you are entitled to have your fees waived if you file an application asking that they be waived. (The dollar amounts are raised approximately every six months, be sure to check for the current form.) If you don't receive such aid, and your income is higher than the maximum income listed on the form, the court does not have to waive your fees, but might still do so if you show hardship.

FORM

You'll find a copy of the Request to Waive Court Fees and the Order on Court Fee Waiver in Appendix C, and the Nolo website includes downloadable copies of these forms. (See Appendix B for the link to the forms in this book.) Judicial Council forms are also available at the court clerk's office.

Timeline for Eviction

How long does the entire eviction process take? Of course, it varies from case to case. Every lawyer who has defended a lot of eviction cases has a story about how great lawyering brilliantly created a paper blizzard and staved off an eviction for many months. On the other hand, an eviction can occur in a blindingly short period of time if the landlord does everything right and you do nothing. Nevertheless, the time estimates we set out here (two to three months) should prove broadly accurate, assuming the following facts:

- You have received a 30- or 60-day notice (these are discussed in Chapter 14).
- The Summons and Complaint are personally served on you.
- You contest the action by filing written responses with the court.
- All papers (after the Summons and Complaint) are served by mail, which is permitted (and is usual practice).
- The landlord (or landlord's attorney) stays on top of the case and files all papers as fast as possible.

Eviction may occur earlier if the landlord:

- had all papers personally served on you, rather than by mail, or
- wins a "summary judgment" and doesn't have to go to trial.

The timeline will be longer if the landlord lets time slip by between any of the procedural steps necessary to move an eviction case along.

It is rare that a landlord's case marches along without one snag or another, many of them caused either by the landlord's attorney's schedule, by courthouse delays, or delays in serving. Practically speaking, if you added two (and sometimes as many as four) weeks to the timeline, you would have a better picture of how long the typical contested eviction takes. On the other hand, if you fail to take one of the steps indicated in the timeline, or you lose on your Motion to Quash or Demurrer, you should deduct the appropriate number of days.

These forms are straightforward and should be simple to fill in. If you fill these waiver forms out correctly—the clerk is required to assist you—and present them to the clerk, the clerk must file any other documents you present at the same time, without your having to pay the fee right then. (GC § 68634 (c).) Later, if the court denies your application, you'll have to pay the filing fee within ten days of being notified. If you don't pay up, the papers you filed will be "unfiled," and a default judgment will be entered against you.

TIP

Check the local practice. Because unlawful detainer actions go through the courts quickly, each court has its own way of dealing with them. For instance, in some courts special judges hear only eviction cases; in others, the presiding judge will decide which judge to send the case to on the morning of trial. Check to see how your court operates. Also, it is helpful to review any local Rules of Court. You can get these from the local court's website or ask the clerk for instructions on how to obtain them.

What If a Tenant Is Not Named in the Complaint?

If you are living in the property but are not named as a defendant in the Complaint, and the person named in the Complaint was not served with a document called a "Prejudgment Claim of Right to Possession," you may protect yourself against eviction for a while by filing a Claim of Right to Possession.

Here's how this process works: If, on filing the unlawful detainer lawsuit, the landlord believes that there are adults other than the tenant listed on the lease or rental agreement living in the property, and if the landlord does not know their

names, the landlord can reach those known-but-unnamed occupants by having a sheriff, marshal, or registered process server serve a Prejudgment Claim of Right to Possession on the defendant and these other occupants of the property. This may be accomplished by personal service, by substitute service, or by posting and mailing. When this happens, any unnamed occupants must fill out the Prejudgment Claim of Right to Possession within ten days, to protect their rights. If an unnamed-but-served adult occupant doesn't do this, the occupant will not be able to stop the eviction later on.

On the other hand, if the landlord does not take the step of serving a Prejudgment Claim of Right to Possession at the outset, a person who is not named in the judgment (and hence not named in the writ of possession) may stop the eviction. This is done by filing the Claim of Right to Possession at a very late stage—namely, when the sheriff or marshal posts the preevict notice.

FORM

You'll find a copy of the Prejudgment Claim of Right to Possession (as well as a regular Claim of Right to Possession form, discussed below) in Appendix C, and the Nolo website includes downloadable copies of these forms. (See Appendix B for the link to the forms in this book (it's also available at the court clerk's office).)

TIP

If you are being evicted for nonpayment of rent or for breach of covenant, one option is to offer early in the proceedings to pay the rent or to cure the breach. This way you can avoid the time and trouble of defending an eviction and your landlord can avoid further time and expenses. If the landlord refuses to agree, you may want to bring that fact up later in the proceedings if you lose and decide to file a Motion for Relief from Eviction (discussed later in this chapter).

The Motion to Quash

Once you become aware that the landlord has filed an unlawful detainer action against you, your first step is to decide whether the landlord has complied with the strict requirements for how the Summons must be served on you. If the landlord didn't follow the rules exactly, you are entitled to file a paper called a "Motion to Quash Service of Summons," asking the court to rule that service of the Summons was improper. (CCP §§ 418.10, 1167.4.) You can also file a Motion to Quash based on a defect in the Summons itself—for example, that it lists the wrong court or judicial district. If this ruling is in your favor, the landlord has to start all over again.

When to File a Motion to Quash Service of Summons

If you file a Motion to Quash, make sure you have a valid reason. Courts frown on your filing motions for the sole purpose of delay. If there are adequate legal grounds for a motion, the request will be heard and possibly granted, and the judge will not inquire into your motives.

Typical grounds for a tenant's Motion to Quash based on defective service are:

- You were not properly served with the Summons and Complaint. For instance, you found it on your doorstep when you got home, or they "substitute served" it on your 12-year-old daughter.
- The process server used substitute service without first attempting to serve you in person at your home or known place of business.
- The landlord himself served you.
- The papers were given to someone other than you, and they were not later mailed.

Be aware that after you file the Motion to Quash, the landlord may try again to serve you. If he does, then you will have five days from the date you are actually served to file another response (15 days if you are served by substitute service or posting and mailing).

Preparing the Motion to Quash

There are three parts to a Motion to Quash.

The Notice of Motion and Motion to Quash: This notifies the other side (the landlord or the landlord's attorney) that you are making the motion and have scheduled a court hearing on a certain day.

Memorandum of Points and Authorities: This is a short statement of the legal authority for your position.

Your Declaration: This is a written statement, made under penalty of perjury, stating the facts supporting your conclusion that service of the Summons was improper.

We do not have a downloadable Motion to Quash on the companion page for this book. You will need to prepare your own on legal paper, as explained below.

If you want to file a Motion to Quash, you must do so within your five-day period to respond.

Here are the basic steps for doing so:

Step 1: Print out (or make) several copies of the blank numbered legal paper with the Superior Court heading and the blank numbered legal paper included in this book. (You'll use different sheets for different parts of the Motion to Quash, as explained below.) You can also buy blank numbered legal paper at a stationery store. Most commonly used word processing programs, like Microsoft *Word*, allow you to generate such line-numbered documents.

FORM

You'll find copies of the blank numbered legal paper (with and without the Superior Court heading) in Appendix C, and the Nolo website includes downloadable copies of these forms. (See Appendix B for the link to the forms in this book.)

Step 2: Take a piece of the numbered legal paper with the Superior Court heading and put your name, address, and telephone number in the same location (and on approximately the same lines) as is shown in the sample. Don't go crazy about trying to line up your text exactly with the numbers. Just do the best you can. You'll use the legal paper with the Superior Court heading for the first page of your response and the legal paper without the Superior Court heading for subsequent pages.

Step 3: Put the county where you are being sued, the court division or branch, as applicable, and the case number in the spaces as indicated on the sample. Get this information from the Summons and Complaint that were served on you.

Step 4: Call the court clerk and ask when and in what department or division motions are heard. In large cities, this tends to be every morning. In less populous areas, motions may be heard only once or twice a week.

Step 5: Once you find out which dates and times are available and which department hears motions, immediately fill in the blanks as follows:

1. Pick a date that is no less than eight and no more than 12 days from the date you plan to file the motion. (CCP § 1167 specifies a three-to-seven-day period or window, but Rule 3.1327(a), Calif. Rules of Court, references CCP § 1013, which adds five more days, for an eight-to-12-day window, where the papers are mailed to the landlord or her attorney.)
2. Fill in the time the court hears motions.
3. Fill in the department where motions are heard.
4. Fill in the address of the court.

Step 6: Fill in your grounds for filing a motion to quash and date and sign your motion as shown in the sample Notice of Motion to Quash, below.

Step 7: Prepare your Points and Authorities.

Skip a couple of lines after the last line of your Notice of Motion to Quash, type the words POINTS AND AUTHORITIES in capitals, and then begin typing your points and authorities.

Sample Notice of Motion to Quash

TOM TENANT
1234 Apartment St.
Berkeley, CA 94710
510-123-4567

Defendant in Pro Per

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF ALAMEDA

BERKELEY-ALBANY DIVISION/BRANCH

LENNY LANDLORD, Plaintiff(s), v. TOM TENANT, Defendant(s).	Case No. 5-0258 DEFENDANT'S NOTICE OF MOTION TO QUASH SERVICE OF SUMMONS; POINTS AND AUTHORITIES; DEFENDANT'S DECLARATION IN SUPPORT THEREOF

To: LENNY LANDLORD, plaintiff, and to LAURA LAWYER, his attorney;

PLEASE TAKE NOTICE THAT on (1) _____, 20___, at (2) _____ in Department No. (3) _____ of the above-entitled court, located at (4) _____, defendant will appear specially pursuant to Code of Civil Procedure Section 418.10 and will move the court for an order quashing the service of Summons herein on the ground(s) that the Summons and Complaint in this case was not served in compliance with C.C.P. § 415 *et. seq.*

////

////

////

////

Sample Notice of Motion to Quash (continued)

The motion shall be based upon this notice, the memorandum of points and authorities in support thereof, the files and records of this case, and the declaration of Tom Tenant, attached hereto.

Dated: February 10 , 20xx

Tom Tenant

TOM TENANT
Defendant in Pro Per

POINTS AND AUTHORITIES

I. DEFENDANT'S MOTION IS PROPERLY NOTICED.

Code of Civil Procedure Section 1167.4 specifies a 3-to-7-day period for noticing unlawful detainer motions to quash. However, Rule 3.1327(a), California Rules of Court, requires motions to quash to be noticed "in compliance with [C.C.P.] sections 1013 and 1167.4." Therefore, when the defendant serves the moving papers by mail, five days' additional notice is required under section 1013, and the 3-to-7-day period for notice is extended to an 8-to-12-day period.

II. DEFENDANT'S MOTION TO QUASH SHOULD BE GRANTED.

A defendant in an unlawful detainer action is entitled to file a Motion to Quash Service of Summons when service has not been validly completed. Code of Civil Procedure Sec. 418.10.

In this action, plaintiff did not serve the Summons and Complaint in compliance with Code of Civil Procedure Sec. 415 *et. seq*. Instead, the Summons and Complaint was found on defendant's doorstep.

To confer jurisdiction, a plaintiff must comply with C.C.P. § 415 *et. seq*. (*American Express v. Zara*, 199 Cal. App. 4th 383, 391, 392 (2011).)

Because plaintiff did not properly serve the Summons and Complaint, this Motion should be granted.

Respectfully submitted,

Tom Tenant

TOM TENANT
Defendant in Pro Per

Declaration

DECLARATION

TOM TENANT declares and says:

1. I am a tenant at 1234 Apartment St., Berkeley, CA 94710.

2. On January 8, 20xx, I found a copy of the Summons and Complaint on my doorstep in front of my house.

3. At no time have I been personally served with a copy of the Summons and Complaint in this action.

4. At no time has a copy of the Summons and Complaint arrived in the mail, addressed to me.

5. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: February , 20xx

Tom Tenant

TOM TENANT
Defendant in Pro Per

You can copy the first sentence directly from the sample. You also need to explain:

- what the landlord did wrong, and
- the specific statute the landlord violated.

If the Summons and Complaint weren't served by someone over 18 or if they were served by someone who was a party to the action, the landlord violated Code of Civil Procedure Section 414.10. If the server used substituted service without first unsuccessfully attempting personal service, the landlord violated Code of Civil Procedure Section 415.20 (b). If some other requirement for substituted service was missed, Section 415.20(b) was violated.

If the landlord erred for some other reason, you will need to find a legal basis for your conclusion and put it in the Points and Authorities. Talk to a tenants' group or lawyer, or research the law yourself (see Chapter 18 for advice), or consult the *California Eviction Defense Manual* (CEB), available in most law libraries.

Step 8: Prepare a Declaration.

Skip a couple of lines after the last line of your Points and Authorities, type the word DECLARATION in capitals, and type your statement, as shown in the sample. Number each paragraph. The judge will use your declaration in place of oral testimony as a basis for deciding whether to grant your motion. So use simple sentences, and don't argue. ("Just the facts, ma'am.") Review your information to make sure it accurately and clearly tells the court what the landlord did wrong. Sign and date the Declaration.

Note: The sample Notice of Motion to Quash, Points and Authorities, and Declaration shown above is based on the scenario that you were not personally served or properly substitute served. The papers will, of course, have to be modified appropriately if you bring your motion for a different reason.

Preparing the Proof of Service by First-Class Mail—Civil

After you have served your motion on the landlord (as discussed in the following section, this must be done by someone other than you, who is not a party to the lawsuit), you'll need to file a document with the court that shows that you complied with legal service requirements. The form you'll use is the Proof of Service by First-Class Mail—Civil. A sample is shown below.

FORM

You'll find a copy of the Proof of Service by First-Class Mail in Appendix C, and the Nolo website includes a downloadable copy of this form. (If you use the Appendix C form, make several copies because you may need more later.) (See Appendix B for the link to the forms in this book on the Nolo website; this form should be available at the court clerk's office.)

Follow these instructions to prepare the Proof of Service by First-Class Mail. (After your server has served the landlord, that person will finish it and sign it, but you can begin completing the proof of service now.) Note that the Judicial Council has also written a set of instructions, which you'll find in Appendix C, right after the Proof of Service by First-Class Mail form; these Judicial Council instructions are also on the Nolo website, along with a downloadable version of the form itself.

Top of the form: Put your name in the top box (after the words, "Attorney or Party Without an Attorney"). Add your address, phone number, and email and fax number (the latter two are optional). After "Attorney For (Name)" write "in pro per."

In the second box, enter the county and the name and address of the Superior Court, which will be the same as the information you entered on the papers that will be served.

Enter your name in the third box, under the line, "Respondent/Defendant." Add the landlord's name under "Petitioner/Plaintiff."

Leave the tall box ("For Court Use Only") on the right blank, but add the case number (again, it's on the papers being served) to the box at the lower right.

Item 1: This statement declares that the person serving the papers is over 18 years of age and either lives in or is employed in the county where the

Proof of Service By First-Class Mail

POS-030

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*	*FOR COURT USE ONLY*
TOM TENANT 1234 Apartment Street Berkeley, CA 94710 TELEPHONE NO.: 510-123-4567 E-MAIL ADDRESS *(Optional)*: FAX NO. *(Optional)*: ATTORNEY FOR *(Name)*: Defendant in Pro Per	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA STREET ADDRESS: 2120 Martin Luther King Way MAILING ADDRESS: CITY AND ZIP CODE: Berkeley, CA 94704 BRANCH NAME: Berkeley-Albany	
PETITIONER/PLAINTIFF: LENNY LANDLORD RESPONDENT/DEFENDANT: TOM TENANT	
PROOF OF SERVICE BY FIRST-CLASS MAIL—CIVIL	CASE NUMBER: 5-0258

(Do not use this Proof of Service to show service of a Summons and Complaint.)

1. I am over 18 years of age and **not a party to this action.** I am a resident of or employed in the county where the mailing took place.
2. My residence or business address is: 1345 Apartment St., Berkeley, CA 94710
3. On *(date):* June 15, 20xx I mailed from *(city and state):* Berkeley, California the following **documents** *(specify):*
   Defendant's Notice of Motion to Quash Service of Summons: Points and Authorities; Declaration in Support Thereof
   ☐ The documents are listed in the *Attachment to Proof of Service by First-Class Mail—Civil (Documents Served)* (form POS-030(D)).
4. I served the documents by enclosing them in an envelope and *(check one):*
   a. ☑ **depositing** the sealed envelope with the United States Postal Service with the postage fully prepaid.
   b. ☐ **placing** the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
5. The envelope was addressed and mailed as follows:
   a. **Name** of person served: Lenny D. Landlord
   b. **Address** of person served: 123 Walnut St.
      Walnut Creek, CA 94596

   ☐ The name and address of each person to whom I mailed the documents is listed in the *Attachment to Proof of Service by First-Class Mail—Civil (Persons Served)* (POS-030(P)).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: June 15, 20xx

Serena Server
(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)

▶ Serena Server
(SIGNATURE OF PERSON COMPLETING THIS FORM)

Form Approved for Optional Use
Judicial Council of California
POS-030 [New January 1, 2005]

PROOF OF SERVICE BY FIRST-CLASS MAIL—CIVIL
(Proof of Service)

Code of Civil Procedure, §§ 1013, 1013a
www.courtinfo.ca.gov

papers are being mailed. You don't need to add anything to this item.

Item 2: The server should print his or her home or business address.

Item 3: Provide the name of each document that the server will mail. Leave the date and "city and state" lines blank for now; your server will fill this information in after he or she actually places the documents in the mail.

Item 4: Your server will check either box a or box b, depending on how the server mailed the documents. Box a is for servers who personally deposit the envelope in a mailbox. Box b is for those who mail from their business, as long as the business has an established procedure for collecting mail and mailing it on the same day it's placed in their "out" box.

Item 5: Provide the name and address of the person to whom the server will mail the documents. If the documents are going to be mailed to more than one person, you'll need to use and attach another form, "Attachment to Proof of Service by First-Class Mail—Civil (Persons Served)." This form, POS-030(P), is in Appendix C (and available for download on the Nolo website), but not shown here. To fill it out, enter the name of the case at the top, as it appears on the Complaint, and the case number. Provide the names and addresses of any additional persons served.

At the bottom of the Proof of Service by First-Class Mail—Civil, after your server has mailed the documents, he or she will fill in the date he or she signed the form, print his or her name, and sign the document. Your server is now stating, under penalty of perjury, that the information provided on the form is true and correct.

How to Serve and File the Notice of Motion to Quash

After you have prepared your Notice of Motion to Quash, you must have a copy of it served on the landlord promptly, to give her enough time to respond before the hearing date. As a defendant, you cannot serve your own legal papers, but you can have a friend or relative do it. The server must be a person over 18 and not a party to the action—that is, not named in the Complaint as a plaintiff or defendant.

Step 1: Complete the document called Proof of Service by First-Class Mail—Civil, following the instructions above.

Step 2: Make three copies of your Notice of Motion to Quash, Points and Authorities, and Declaration, and the filled-in but unsigned Proof of Service by First-Class Mail—Civil. Refer to "Preparing the Proof of Service by First-Class Mail—Civil," above, to make sure that the Proof of Service is complete and correct (enter any missing information now). You'll file the original of the documents with the court clerk, one copy goes to the other side, one copy you keep, and the third copy is a "courtesy copy" that goes to the courtroom of the judge who will hear the motion.

Step 3: Attach a copy of the unsigned Proof of Service to each set of your motion papers.

Step 4: Have your server mail one set of copies (the motion papers and the Proof of Service) to the landlord's attorney (listed on the Summons) or the landlord if there is no attorney. The papers must be mailed on the day indicated on the Proof of Service.

Step 5: Now have your server fill in the blanks in the last paragraph of the Proof of Service and sign the document. Attach it to the original motion.

Step 6: Take the original motion papers and one set of copies to the court clerk. Give the original set of papers to the clerk, who will stamp (or have you stamp) your copies with a "filed" message. This is your proof that you filed the originals with the clerk. The clerk will ask you to pay the filing fee.

Step 7: Deliver a file-stamped copy of the papers to the courtroom of the judge who will hear the motion. Many courts require these "courtesy copies," but some don't. Check with the clerk when you file your papers.

Step 8: The clerk will note the date you indicated for the hearing on the Notice of Motion and enter it on the court calendar after you leave.

Step 9: Rule 3.1327, California Rules of Court, says that the landlord may oppose the motion orally, at the hearing, or file a written opposition and serve it on you one court day before the hearing.

Step 10: Judges sometimes make a tentative decision solely on the basis of the papers filed. If so, this tentative decision may be posted outside the courtroom on the date of the hearing. Some courts even have specific telephone lines connected to voice mail that list tentative rulings. Increasingly, tentative rulings are posted on the court's own website. (See "Tentative Rulings on the Web," below, for instructions on how to access your court's website.) If the decision is for the landlord, some courts require you to call the landlord before the hearing if you want to argue your side.

Step 11: The day of the hearing, go a little early and check with the clerk's office to make sure your case is on the calendar. If it isn't, find out why. If it is, go to the courtroom indicated.

Tentative Rulings on the Web

Your court may use its website to announce tentative rulings. To find your court's site, go first to the Judicial Council website at www.courts.ca.gov. Choose the Courts link at the top, then the Superior Courts link on the next page. Find your county on the alphabetical list of California counties. When you're at your county court's website, search for "tentative rulings."

CAUTION

Don't file by mail. Though it is legal to file papers by mail, we don't recommend it. The time limits are so tight in unlawful detainer cases (three to seven days) that a postal foul-up or a mishandling in the clerk's office can cause you no end of grief.

The Court Hearing on a Motion to Quash

The evening before the hearing, you should sit down, relax, and go over the points stated in your motion papers to familiarize yourself with them. Judges are getting more and more used to people representing themselves in court, and generally treat self-represented people with courtesy and respect. Although they understand that you are not a lawyer, they expect parties representing themselves to be familiar with proper procedures. On the day of the hearing, dress conservatively, though you don't have to wear a business suit. Try to get to the courtroom a little early.

When your case is called, step forward. Some judges begin by asking questions, but others prefer that the person bringing the motion (you) talk first. In any case, don't start talking until the judge asks you to begin. Your argument should be straightforward and based on the facts and issues set forth in your declaration and motion papers and the landlord's responses to your papers.

Don't refer to any facts not contained in the declarations, or state your opinion of the landlord, or argue the merits of your situation beyond what you have raised in your motion papers.

After the landlord or landlord's lawyer has had a chance to argue their side, you can respond. The judge will either rule on the motion or take the matter "under submission" and decide later.

If the judge denies the motion, you will have some time to file your next response (or whatever other action is required at that time). If you win, the landlord may have another Summons ready to serve on you right there, and you start all over again.

The Demurrer

Once the landlord has properly served you with a Summons and Complaint, you are entitled to file an Answer to the Complaint or a Demurrer. (CCP § 1170.) You must either answer or demur within

five days from the date the Summons and Complaint were properly served—or after any Motion to Quash that you made was denied. If the fifth day falls on a Sunday or holiday, the last day for your response is extended to the next business day.

When you file a Demurrer, what you are really saying is, "Assuming, only for the purpose of argument, that everything the landlord says in the Complaint is true, it still doesn't provide legal justification for the court to order me evicted."

Note that when you file a Demurrer, you assume that the facts as stated by the landlord in the Complaint are true only for the purpose of this particular hearing. You are not conceding the truth of anything in the Complaint. Once the court rules on your Demurrer, you will still have a chance to file a written Answer, in which you may deny any factual allegations in the Complaint that you believe are false or don't actually know to be true, and where you may raise affirmative defenses. (The Answer is discussed below.)

When to File a Demurrer

Here are some common legal grounds on which you may properly demur to a Complaint:

- **The three-day notice wasn't in the alternative.** All three-day notices—including those based on nonpayment of rent—must be in the alternative, unless the landlord is alleging violation of a lease provision that is not curable within that time (Unconditional Three-Day Notice to Quit). For example, if you receive a Three-Day Notice to Quit because you have a dog (or failed to pay the rent) and the notice fails to say that you have the alternative of getting rid of the dog (or paying the rent) in three days, it is defective. (See the discussion of three-day notices under "Tenancy Termination Notices" in Chapter 14, for details on three-day notices.) (See *Turney v. Collins* (1949), 48 Cal.App.2d 381, 392; *Horton-Howard v. Payton* (1919), 44 Cal.App. 108, 112.)
- **The three-day notice failed to tell the tenant where, or during what days or hours, the rent could be paid.** If the notice omits this information, it's defective. (CCP § 1161(2).)
- **The Complaint was filed too soon.** The date the Complaint was filed will be stamped on the first page of the Complaint. Look at this date. If it is before the three days or the 30, 60, or 90 days given by the notice, you can demur. (See *LaManna v. Vognar,* 17 Cal.App.4th Supp. 1 (1993).)
- **In jurisdictions that require a "just cause for eviction" (usually rent control jurisdictions—see Appendix A), the landlord's failure to comply with all the requirements of a particular "just cause" for eviction may be grounds for a Demurrer.** Remember, it's the form of the landlord's allegation, not its substance, that matters. For instance, in many jurisdictions, the landlord is supposed to state the grounds for eviction in the notice. If the notice attached to the complaint does not state any grounds, then you can demur. In the case of an eviction for "nuisance," a landlord is supposed to describe what the nuisance is. Again, if he fails to do so in the notice, you have a Demurrer. Suppose, however, that the landlord says you are dealing drugs (which is a nuisance) and it is not a true statement; that is something that the landlord would have to prove at trial, and you cannot file a Demurrer.

For additional affirmative defenses, consult the *California Eviction Defense Manual*, published by Continuing Education of the Bar.

Preparing the Demurrer

You need to prepare four documents to file a Demurrer:

- The Demurrer
- Notice of Hearing
- Memorandum of Points and Authorities, and
- Request for Judicial Notice (of the Complaint you are demurring to).

TIP

Unlike a Notice of Motion to Quash, don't use a Declaration to support your Demurrer. In a Demurrer, the only question is whether the allegations in the landlord's Complaint (assuming they are true only for the purpose of the hearing), are sufficient to state a case. Since that is purely a question of law, any facts you might submit by declaration would be irrelevant to your Demurrer.

FORM

You'll find copies of the Demurrer (and related forms, Points and Authorities in Support of Demurrer and Notice of Hearing on Demurrer, discussed below) in Appendix C, and the Nolo website includes downloadable copies of these forms. (See Appendix B for the link to the forms in this book.)

Filling Out the Demurrer

For instructions on how to complete the Demurrer, refer to Steps 1-3 for preparing the Motion to Quash set out above.

The list of legal grounds for a Demurrer are discussed in "When to File a Demurrer," above. For example:

If the first reason for filing applies to your situation, enter: "The three-day notice attached to the Complaint simply ordered me to vacate, without giving me the alternative of stopping any alleged breach of the rental agreement."

If the second reason for filing applies to you, enter: "The three-day notice failed to state the days/times/place where rent could be paid."

If the third ground fits your situation, enter: "The Complaint was filed prematurely, before the time set in the notice expired."

Sign and date the Demurrer.

Filling Out the Memorandum of Points and Authorities

The next step is to prepare a Points and Authorities in Support of Demurrer. There is a blank copy of this form in Appendix C and a downloadable copy on the Nolo website.

To complete the top portion of this form, refer to Steps 1-3 for preparing the Motion to Quash, above.

The next section (I. Defendant's Demurrer Is Properly Before the Court) is boilerplate language. You don't need to add anything to this.

For the bottom portion of the Points and Authorities in Support of Demurrer (II. Argument), repeat each ground in the numbered paragraphs provided as you did at the start of the Demurrer. This time, however, you should follow each ground by an appropriate legal reference:

- For the first ground (three-day notice wasn't in the alternative), this is: *Turney v. Collins* (1949), 48 Cal.App.2d 381, 392; *Horton-Howard v. Payton* (1919), 44 Cal.App. 108, 112.)
- For the second ground (three-day notice failed to specify where or when the rent could be paid), put CCP § 1161(2).
- For the third ground (the Complaint was filed too soon), put *LaManna v. Vognar,* 17 Cal.App.4th Supp. 1 (1993).

(See the sample Points and Authorities with the Demurrer, below.)

Attach your Points and Authorities to your Demurrer.

Filling Out the Notice of Hearing on Demurrer

A blank form for the Notice of Hearing is in Appendix C and a downloadable copy is on the Nolo website.

A sample is included with the Demurrer shown below. Refer to the instructions for "Preparing the Notice of Motion to Quash," above. Follow them for the Notice of Hearing on Demurrer, with the following exceptions:

- Call the court clerk and ask when Demurrers (rather than motions) are heard by the court.
- Unless the court clerk says otherwise (some courts insist that Demurrers in unlawful detainer cases be heard on short notice), select a hearing date that is at least 16 court (not calendar) days—don't count Saturdays, Sundays, or holidays—after the date you plan to file your Demurrer, plus five calendar days

Sample Demurrer

TOM TENANT
1234 Apartment St.
Berkeley, CA 94710
510-123-4567

Defendant in Pro Per

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF ALAMEDA

BERKELEY/ALBANY DIVISION/BRANCH

LENNY LANDLORD, Plaintiff(s),

v.

TOM TENANT, Defendant(s).

Case No. 5-0258

DEMURRER OF TOM TENANT

TO THE COMPLAINT OF LENNY LANDLORD

Defendant(s) demur to the Complaint on the following ground(s):

1. The three-day notice attached to the Complaint simply ordered me to vacate, without giving me the alternative of curing any alleged breach of the rental agreement.
2.
3.

Dated: February 20, 20xx

Tom Tenant
Tom Tenant

Sample Points and Authorities (Demurrer)

TOM TENANT
1234 Apartment St.
Berkeley, CA 94710
510-123-4567

Defendant in Pro Per

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF ALAMEDA

BERKELEY/ALBANY DIVISION/BRANCH

LENNY LANDLORD, Plaintiff, v. TOM TENANT, Defendant(s).	Case No. 5-0258 POINTS AND AUTHORITIES IN SUPPORT OF DEMURRER (CCP § 430.10)

I. DEFENDANT'S DEMURRER IS PROPERLY BEFORE THE COURT

A defendant in an unlawful detainer action may demur. C.C.P. § 1170. See Hinman v. Wagnon, 172 Cal. App.2d 24 (1959), where the court held that a demurrer was proper where the incorporated 3-day notice was defective on its face. The court sustained a dismissal following sustaining the demurrer without leave to amend.

The periods for noticing hearing on a demurrer are not stated in the unlawful detainer statutes, so C.C.P. Section 1177 incorporates the regular provisions of the Code of Civil Procedure, such as C.C.P. Section 1005 requiring that motions be noticed on 16 court days' notice, plus five calendar days for mailing. Rule 3.1320(c), California Rules of Court, specifies that demurrers shall be heard in accordance with Section 1005.

Sample Points and Authorities (Demurrer) (continued)

II. ARGUMENT

The three-day notice attached to the complaint simply ordered me to vacate, without giving me the alternative of curing any alleged breach of the rental agreement. *Turney v. Collins* (1949), 48 Cal.App. 2d. 381, 392; *Horton-Howard v. Payton* (1919), 44 Cal.App. 108, 112.

Dated: February 20, 20xx

Tom Tenant
Tom Tenant

Notice of Hearing on Demurrer

TOM TENANT
1234 Apartment St.
Berkeley, CA 94710
510-123-4567

Defendant in Pro Per

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF ALAMEDA

BERKELEY/ALBANY DIVISION/BRANCH

LENNY LANDLORD, Plaintiff(s), v. TOM TENANT, Defendant(s).	Case No. 5-0258 NOTICE OF HEARING ON DEMURRER OF TOM TENANT TO THE COMPLAINT OF LENNY LANDLORD

To: _____

PLEASE TAKE NOTICE THAT on _____, _____, at _____ in Department No. _____ of the above entitled court, located at _____, a hearing will be held on Defendant's demurrer to the Complaint, a copy of which is served with this notice.

Dated: February 20, 20xx

Tom Tenant
Tom Tenant

(add them because the copy of the demurrer and other papers will be mailed to the landlord or landlord's attorney).
- Some courts will require you to confer with the other side about picking a date for a hearing on the demurrer. Consult the local rules on this.

Request for Judicial Notice

Because a Demurrer attacks the complaint, many courts require that you file a copy of the complaint along with the Demurrer (even though it's already in the court file). This request puts the complaint that's been filed against you before the court at this hearing on your Demurrer. Whether or not it is required in your jurisdiction, it's a good idea to attach a copy so that the court will be able to easily look at the pleading that's the subject of the hearing.

Use the form Request for Judicial Notice included with the forms for this book (a sample is provided below). Then copy the complaint, along with any exhibits to the complaint, write "Exhibit A" across the top of the first page of the complaint, and attach these pages as Exhibit A to the Request for Judicial Notice. That's it!

Filing and Serving the Demurrer

After you have prepared your Demurrer, here's how to file and serve it.

Step 1: Complete the document included in this book called Proof of Service by First-Class Mail—Civil, following the instructions found in the discussion of Motion to Quash, above. The server must be a person over 18 and not a party to the action—that is, not named in the Complaint as a plaintiff or defendant. As a defendant, you cannot serve your own legal papers.

Step 2: Make three copies of your Demurrer papers (Notice of Hearing, Demurrer, Points and Authorities in Support of Demurrer, Request for Judicial Notice, and the Proof of Service). Print the server's name on the last line of both copies of the Proof of Service. You'll file the original of the documents with the court clerk, one copy goes to the other side, one copy you keep, and the third copy is a "courtesy copy" that goes to the courtroom of the judge who will hear the motion.

Step 3: Attach one copy of the Proof of Service by First-Class Mail—Civil, to each set of copies of your Demurrer papers.

Step 4: Have your server mail one set of copies (your Demurrer papers and an unsigned Proof of Service) to the landlord's attorney (listed on the Summons) or the landlord if there is no attorney.

Step 5: Now have your server fill in the blanks in the last paragraph of the Proof of Service and sign it, stating that the mailing has occurred. Attach this original to your original Demurrer papers.

Step 6: Take the original Demurrer papers and two sets of copies to the court clerk. Give the original set of papers to the clerk, who will stamp (or have you stamp) your copies with a "filed" notation, in the upper-right corner. This is your proof that you filed the originals with the clerk.

Step 7: Deliver a file-stamped copy of the papers to the courtroom of the judge who will hear the motion. Many courts require these "courtesy copies," but some don't. Check with the clerk when you file your papers.

Step 8: The clerk will note the date you indicated for the hearing on the Demurrer and enter it on the court calendar.

If the landlord desires to respond to your Demurrer, he or she must file a response at least nine court days before the hearing. If you wish to make a written response to those papers, you must do so at least five court days before the hearing. (CCP § 1005.)

Step 9: Courts sometimes make a tentative decision solely on the basis of the papers filed. (See "Tentative Rulings on the Web," above.) If you want to argue your side even if the tentative decision is against you, some courts require you to call the landlord (or landlord's attorney) and say you're still going to argue.

Step 10: On the day of the hearing, check to see that your case is on the calendar. If it isn't, ask the clerk why and get it rescheduled.

Sample Request for Judicial Notice

TOM TENANT
1234 Apartment St.
Berkeley, CA 94710
510-123-4567

Defendant in Pro Per

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF ALAMEDA

BERKELEY/ALBANY DIVISION/BRANCH

LENNY LANDLORD, Plaintiff(s),

v.

TOM TENANT, Defendant(s).

Case No. CGC-12-521271

REQUEST FOR JUDICIAL NOTICE

Defendant TOM TENANT hereby requests that the Court take judicial notice of the Complaint filed in this action and attached hereto as Exhibit A, pursuant to California Evidence Code Section 452(d).

California Evidence Code Section 453 provides that the trial court shall take judicial notice of any matter specified in Section 452 if a party requests it, provide each party has been given sufficient notice and the court has been provided a copy. Defendant has complied with these requirements.

Dated: February 20, 20xx

Tom Tenant

CAUTION

Don't file by mail. Though it is legal to file papers by mail, we don't recommend it. The time limits are so tight in unlawful detainer cases that a postal foul-up or a mishandling in the clerk's office could result in your papers not being filed on time and a default being entered against you.

Sometimes a landlord (or landlord's attorney) will see your Demurrer and realize that the basis may well be valid. Then, rather than going to the hearing and risking a loss, the landlord will file an "amended complaint" and serve it on you—even before the Demurrer hearing. The amended complaint takes the place of the original complaint and starts the clock ticking again.

In this situation, you must respond to the amended complaint within five days of when you were personally served, or ten days if the amended complaint was mailed to you. When this happens, you cannot file a Motion to Quash the amended complaint because you have already submitted to the court's jurisdiction by filing a Demurrer attacking the first complaint. You can either file another Demurrer or an answer to the first amended complaint. You shouldn't worry about the hearing for the Demurrer to the original complaint. Since the landlord has filed an amended complaint, the court has no reason to hear the Demurrer, and it should be "taken off calendar."

At the Court Hearing

(See the discussion on "The Court Hearing on a Motion to Quash," above.)

The judge will do one of three things at the hearing:

- **Overrule (deny) the Demurrer.** This means that you've lost the motion, and you will have five days to file your Answer. A word of caution: Technically, you have to answer only after you receive a formal Notice of Ruling (usually prepared by opposing counsel), (you have five days if served personally, ten days if served by mail). However, this requirement of first receiving the formal notice has caused some confusion in some courts and clerks have inadvertently entered defaults, even though the formal Notice of Ruling was not given to the tenant. You should check with a local legal resource or the court clerk before relying on the date of the Notice of Ruling.
- **Sustain the Demurrer "without leave to amend."** This means you've won the motion and the landlord has to start over (usually by giving a new notice of termination).
- **Sustain the Demurrer "with leave to amend."** This gives the landlord an opportunity to file an "amended complaint." If you are served with an amended complaint, you have five days to respond (if served personally; ten days if it is mailed to you).

Procedures Other Than a Demurrer

Other motions may be appropriate at this stage of the proceedings. For instance, a "motion to strike" might be appropriate if the landlord's Complaint requests relief that is not justified by the allegations. For more on this, consult the *California Eviction Defense Manual,* published by Continuing Education of the Bar (CEB).

The Answer

The Answer is where you tell your version of what happened. You must file it with the court within five days of receiving the Summons and Complaint (15 days if substituted service was used), unless you file a Motion to Quash or Demurrer instead. If you miss the deadline, the landlord can take a default judgment against you. Defaults are discussed just below.

Even if you first file a Demurrer or Motion to Quash, you will have to file an Answer sooner or later, unless the landlord drops the case.

If your Demurrer is upheld by the court, the landlord will have to amend the Complaint. Then you can demur again, if you have grounds, or file

Answer—Unlawful Detainer

UD-105

ATTORNEY OR PARTY WITHOUT ATTORNEY	FOR COURT USE ONLY
NAME: TOM TENANT STATE BAR NO.:	
FIRM NAME:	
ADDRESS: 1234 Apartment Street	
CITY: Berkeley, CA 94710 STATE: ZIP CODE:	
E-MAIL ADDRESS *(Optional)*: TELEPHONE NO.:	
ATTORNEY FOR *(Name)*: Defendant in Pro Per FAX NO. *(Optional)*:	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF	
STREET ADDRESS: Alameda County Superior Court	
MAILING ADDRESS: 2000 Center St.	
CITY AND ZIP CODE: Berkeley, CA 94704	
BRANCH NAME: Berkeley-Albany Judicial Division	
PLAINTIFF: LENNY LANDLORD	
DEFENDANT: TOM TENANT	
ANSWER—UNLAWFUL DETAINER	CASE NUMBER: 5-0258

1. Defendant *(each defendant for whom this answer is filed must be named and must sign this answer unless his or her attorney signs):* TOM TENANT

   answers the complaint as follows:

2. ***Check ONLY ONE of the next two boxes*:**
   a. ☐ Defendant generally denies each statement of the complaint. *(Do not check this box if the complaint demands more than $1,000.)*
   b. ☑ Defendant admits that all of the statements of the complaint are true EXCEPT:
      (1) Defendant claims the following statements of the complaint are false *(state paragraph numbers from the complaint or explain below or on form MC-025):* ☑ Explanation is on MC-025, titled as Attachment 2b(1).
      5.d., 6.a.(1), 7.a.(1), 8.a., 9, 10, and 11
      (2) Defendant has no information or belief that the following statements of the complaint are true, so defendant denies them *(state paragraph numbers from the complaint or explain below or on form MC-025):*
      ☐ Explanation is on MC-025, titled as Attachment 2b(2).

3. AFFIRMATIVE DEFENSES *(**NOTE:** For each box checked, you must state brief facts to support it in item 3k (top of page 2).)*
   a. ☑ *(nonpayment of rent only)* Plaintiff has breached the warranty to provide habitable premises.
   b. ☐ *(nonpayment of rent only)* Defendant made needed repairs and properly deducted the cost from the rent, and plaintiff did not give proper credit.
   c. ☐ *(nonpayment of rent only)* On *(date)*: before the notice to pay or quit expired, defendant offered the rent due but plaintiff would not accept it.
   d. ☐ Plaintiff waived, changed, or canceled the notice to quit.
   e. ☐ Plaintiff served defendant with the notice to quit or filed the complaint to retaliate against defendant.
   f. ☐ By serving defendant with the notice to quit or filing the complaint, plaintiff is arbitrarily discriminating against the defendant in violation of the Constitution or the laws of the United States or California.
   g. ☐ Plaintiff's demand for possession violates the local rent control or eviction control ordinance of *(city or county, title of ordinance, and date of passage)*:

      (Also, briefly state in item 3k the facts showing violation of the ordinance.)
   h. ☐ Plaintiff accepted rent from defendant to cover a period of time after the date the notice to quit expired.
   i. ☐ Plaintiff seeks to evict defendant based on acts against defendant or a member of defendant's household that constitute domestic violence, sexual assault, or stalking. *(A temporary restraining order, protective order, or police report not more than 180 days old is required naming you or your household member as the protected party or a victim of these crimes.)*
   j. ☐ Other affirmative defenses are stated in item 3k.

Form Approved for Optional Use
Judicial Council of California
UD-105 [Rev. January 1, 2012]

ANSWER—UNLAWFUL DETAINER

Civil Code, § 1940 et seq.;
Code of Civil Procedure, § 425.12, § 1161 et seq.
www.courts.ca.gov

Answer—Unlawful Detainer (continued)

UD-105

CASE NUMBER: 5-0258

3. AFFIRMATIVE DEFENSES (cont'd)
   k. Facts supporting affirmative defenses checked above *(identify facts for each item by its letter from page 1 below or on form MC-025)*:
      ☑ Description of facts is on MC-025, titled as Attachment 3k.

      3.a. I did not pay rent because the landlord did not fix the broken heater in my apartment, despite my repeated requests.

4. OTHER STATEMENTS
   a. ☐ Defendant vacated the premises on *(date)*:
   b. ☐ The fair rental value of the premises alleged in the complaint is excessive *(explain below or on form MC-025)*:
      ☐ Explanation is on MC-025, titled as Attachment 4b.

   c. ☐ Other *(specify below or on form MC-025 in attachment)*:
      ☐ Other statements are on MC-025, titled as Attachment 4c.

5. DEFENDANT REQUESTS
   a. that plaintiff take nothing requested in the complaint.
   b. costs incurred in this proceeding.
   c. ☐ reasonable attorney fees.
   d. ☑ that plaintiff be ordered to (1) make repairs and correct the conditions that constitute a breach of the warranty to provide habitable premises and (2) reduce the monthly rent to a reasonable rental value until the conditions are corrected.
   e. ☐ Other *(specify below or on form MC-025)*:
      ☐ All other requests are stated on MC-025, titled as Attachment 5e.

6. Number of pages attached: 1

UNLAWFUL DETAINER ASSISTANT (Bus. & Prof. Code §§ 6400—6415)

7. *(Must be completed in all cases.)* An **unlawful detainer assistant** ☐ did not ☐ did for compensation give advice or assistance with this form. *(If defendant has received **any** help or advice for pay from an unlawful detainer assistant, state:*
   a. Assistant's name: b. Telephone No.:
   c. Street address, city, and zip code:
   d. County of registration: e. Registration No.: f. Expires on (date):

(Each defendant for whom this answer is filed must be named in item 1 and must sign this answer unless his or her attorney signs.)

TOM TENANT (TYPE OR PRINT NAME)

▶ Tom Tenant (SIGNATURE OF DEFENDANT OR ATTORNEY)

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF DEFENDANT OR ATTORNEY)

VERIFICATION

(Use a different verification form if the verification is by an attorney or for a corporation or partnership.)

I am the defendant in this proceeding and have read this answer. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Date:

TOM TENANT (TYPE OR PRINT NAME)

▶ Tom Tenant (SIGNATURE OF DEFENDANT)

an Answer. If, on the other hand, your Demurrer is overruled, you will have to file an Answer within five days after the date of the notice of the court order overruling the Demurrer.

Filling Out the Form Answer

Fortunately, a form Answer has been developed by the California Judicial Council specifically for unlawful detainer cases (see the sample shown below).

FORM

You'll find copies of the Answer—Unlawful Detainer (and the related Attachment form discussed below) in Appendix C, and the Nolo website includes downloadable copies of these forms. (See Appendix B for the link to the forms in this book and details on how to access and use Judicial Council forms.)

Top of the Form: This is self-explanatory. Put your name in both the top box—"Attorney or Party Without Attorney"—and the one marked "Defendant." Put your landlord's name under Plaintiff. You will find the name and address of the court and the case number on the Complaint.

Item 1: Fill in your name under Defendant.

Item 2: If the Complaint expressly asks for less than $1,000 in rent, check Box a. If it asks for more than $1,000, check Box b.

If you checked Box b (as our sample Answer does), you have a little more work to do before going to Item 3. Follow these directions and you should have no trouble.

Carefully read the Complaint, paragraph by paragraph. As you do, take the following actions for each paragraph:

1. If you agree with *everything* in a paragraph of the Complaint, go on to the next one.
2. If you disagree with *any* statement in a paragraph, enter the paragraph number in the space on the Answer form after 2b(1). You may very well disagree with more than one paragraph. If so, enter the numbers of all such paragraphs. If you don't have enough space to list all the paragraphs, check the box labeled "Explanation is on MC-025, titled as Attachment 2b(1)," and use the Attachment form included in Appendix C and on the Nolo website. (A sample of this attachment form is not included in this chapter.) Clearly label each attachment with the number of the paragraph on the printed form Answer to which it refers. Each attachment should be on one side of the Attachment form and should be stapled to the Answer.
3. If you don't have enough information to agree or disagree with a statement in a paragraph, enter the paragraph number in the space on the Answer form labeled 2b(2). If you need more room, check the box labeled "Explanation is on MC-025, titled as Attachment 2b(2)," and prepare an attachment page as described above.

Do a careful job of reading each paragraph of the Complaint. The court will accept as true any of the landlord's statements in any paragraph that isn't listed on your Answer form. For example, suppose a landlord's Complaint alleges, in Paragraphs 7.a or 8.a, that the tenant was served with a three-day notice to pay rent or quit on January 7th. If the tenant doesn't list "7.a or 8.a" as one of the denied paragraphs in Item 2.a(2) of the Answer, the tenant has admitted that he or she was served the notice. At trial, the judge will not permit the tenant to say otherwise. Any paragraph that isn't listed after Box 2.b(1) or 2.b(2) will be accepted as true by the court.

Item 3. Affirmative Defenses. An affirmative defense consists of new facts that constitute a legal excuse or justification. For example, the fact that you did not pay the landlord the rent is justified by the additional fact, or affirmative defense, that he failed, despite your request, to fix a leaky roof, overflowing toilet, or nonworking heating system. The Answer lists common affirmative defenses; check any that you plan to raise if your eviction goes to trial.

Here's another example. Suppose the landlord seeks to evict you because you didn't pay your full rent. If your defense is that you didn't pay the rent

because you properly used the repair and deduct remedy to address a serious problem, as discussed in Chapter 6, it is based on different facts from those found in the Complaint and is therefore an affirmative defense—in this case, Item 3.b.

Another example is an eviction that was supposedly based on just cause—such as a landlord in a rent control city evicting a tenant on the grounds that the owner needs to make major repairs. If this eviction was made in bad faith—for example, the tenant checked with the city and found out that the landlord had not taken out the necessary building permits—the tenant would have an affirmative defense to the eviction. In this case, the tenant should check Item 3.g and list the name of this city's rent control or just cause eviction ordinance and the date of its enactment (see the Rent Control Chart in Appendix A for this information). Be sure you also deny the allegations of Paragraph 14.

In Item 3.k, state the facts on which you base your affirmative defense. See the examples below. Generally, the fewer words you use to describe your defense, the better. If your entire statement fits in the space under 3.k, fine. However, even if you try to be brief, the room provided will probably not be enough. If you need more space, check the box next to "Description of facts is on MC-025, titled as Attachment 3k." Then take a sheet of 8½" x 11" paper, label it "Attachment to Item 3.k of Answer" at the top, and explain the facts regarding each affirmative defense.

Affirmative Defenses in Rent Control Cities: If you live in a rent control city, it is possible that you have been charged more rent than the ordinance allows. (See Chapter 3.) If this is the case, the landlord's claim that you failed to pay rent can be defeated on the ground that the rent demanded in the three-day notice was higher than it should have been. Although this defense is technically raised by a simple denial in Item 2 of the Answer, it is also a good idea to describe your position in an affirmative defense—in this case, Item 3.g.

State law says that landlords in rent control cities that require registration of rents (Berkeley, Santa Monica, East Palo Alto, Los Angeles, and West Hollywood) can't be penalized for good faith mistakes in the amount of rent they charge. (CC § 1947.7.) Landlords may argue that the statute also protects them from having a three-day notice thrown out because it demanded the wrong rent. Your response should be that dismissal of a Complaint because of a deficient three-day notice is not one of the penalties covered by the statute.

If you receive a 30- or 60-day notice of eviction because the landlord or the landlord's relative plans (in good faith) to move in (reside) in the unit (a just cause for eviction in many rent control cities), do a little checking before you decide to leave. To evaluate your chances for this type of eviction, review the local ordinance providing for "just cause" eviction. Many ordinances have detailed requirements. For example, some jurisdictions require landlords to pay moving expenses, or that the landlord has to live in the building in order to move a relative in, or that the landlord has to inform the tenant if any other units owned by the landlord are vacant.

If the landlord says he is moving in himself, find out where he lives now. If he lives in a fancy neighborhood and you live in a not-so-fancy one, it would seem very unusual for him to really plan to move in. If your rent is among the lowest rents in the building, the landlord may want you out pretty badly, because he can make the greatest profit by evicting you and charging a higher rent to a new tenant. In either case, see if he owns other vacant apartments he could move into instead. If he does, most ordinances require that he occupy one of these.

If a landlord claims that a relative is moving in, try to find out if the relative really exists, and if it would make sense for the relative to want to live there. For example, if the landlord's daughter is going to college in another city, it is not likely that she would want to move into your place in the middle of the semester.

If you do move out because the landlord says that she or a relative is moving in, go back and check up on whether the person moved in and, if so, how long he or she stayed. If it turns out

that this was merely a scheme to take advantage of vacancy decontrol, you might be able to file a profitable lawsuit.

Here are some brief examples of affirmative defenses, with references to sections in this book where these issues are discussed in greater detail.

Item 3.a. Breach of Warranty of Habitability: If you are being evicted for nonpayment of rent and the landlord had reason to know that there are deficiencies in your apartment affecting its habitability, you should check Box 3.a and put the details in 3.k and any attachments. (See Chapter 6.)

Sample Statement of Details

> On December 25, 20xx, I notified my landlord (the plaintiff in this action) that the heating unit in my apartment was broken and asked that it be fixed. This was not done. Or, On March 19, 20xx, I notified my landlord that the roof was seriously leaking in three places. The roof has never been fixed.

Item 3.b. Use of Repair and Deduct Remedy: If you used the repair and deduct remedy, and the landlord failed to give you credit in the three-day notice for the amount you deducted from your rent (see Chapter 6), check this box and put the details in 3.k.

Item 3.c. Landlord's Refusal to Accept Rent: If you tried to pay the rent during the time allowed you by a three-day notice but the landlord refused to accept it, check this box. If you tried to pay the rent after the three days (but before the lawsuit was filed) and the notice did not mention "forfeiture" of your tenancy, check this box. (See the discussion of three-day notices in Chapter 14.)

Item 3.d. Cancellation of Notice: Sometimes, after a three-day or 30-, 60-, or 90-day notice is served, the landlord (or the landlord's agent) says something to indicate that he didn't mean it, that you can have more time, or something else inconsistent with the notice. This also applies where the landlord has accepted all or part of the rent demanded in a three-day notice. If this happens, he may have implicitly waived or canceled the notice, so check Item 3.d.

Sample Statement of Details

> After I received the notice, Plaintiff's resident manager told me that she had served the notice on me only to scare me, and as long as I paid by the end of the month, no eviction lawsuit would be filed.

Item 3.e. Retaliatory Eviction: Retaliatory eviction is a very common defense. A landlord is not allowed to retaliate (get back at you) because you exercised a right that you have under the law. (CC § 1942.5.) For example, if the landlord is evicting you because you contacted the building inspector, demanded repairs, organized a tenant's union, or exercised any other legal right, you have a strong defense to the eviction. It is the tenant's burden, however, to prove that it is more likely than not that the landlord's reason (motive) for eviction is to retaliate. If you believe that your landlord is illegally retaliating against you (see above), check Item 3.e and put the details in 3.k.

Sample Statement of Details

> After Plaintiff twice refused to respond to our request that he fix the toilet, we complained to the city health department. Forty-five days later, we received a 30-day termination notice. We believe that we are being evicted in retaliation for our complaint to the health department.

Item 3.f. Discrimination: The landlord may not evict you because of your race, religion, sex, sexual preference, or job; because you have children; or for any reason based on your personal characteristic or trait. (See Chapter 4.)

Sample Statement of Details

> Plaintiff served me with the 30-day notice because he doesn't want African-American people living in his rental units.

Item 3.g. Just Cause for Eviction Ordinances: If you live in a city with a rent control ordinance that requires just cause for eviction, and you dispute the just cause alleged in the Complaint, simply deny that allegation of the Complaint (by putting the paragraph number in Item 2.b(1)). We also recmmend that you check Item 3.g. (See Chapter 3 and "Tenancy Termination Notices" in Chapter 14.)

Sample Statements of Details

> The rent control ordinance of the City of Santa Monica says that a three-day notice must tell me of my right to call the rent board for advice. The notice served on me by Plaintiff did not say this, so it is invalid.

> The rent control ordinance of the City of San Francisco requires that the 30-day notice state a just cause to evict. The 30-day notice served on me by the landlord did not do this.

> Landlord has sued to evict me because she wants her mother to live in the unit. This is not a just cause to evict because under the rent control ordinance of the City of San Francisco, landlord must first establish that there are no other vacant units that her mother can live in. In fact, at the time she served me with the 30-day notice, she had two equivalent vacancies.

Item 3.h. Acceptance of Rent Beyond Notice Period: If the landlord served a 30-, 60-, or 90-day notice and then accepted rent covering a period beyond the 30, 60, or 90 days, he has implicitly withdrawn the notice, so check this box. (*Highland Plastics v. Enders,* 109 Cal.App.3d Supp. 1 (1980).) This also applies if the landlord has subsequently accepted any of the rent demanded in a three-day notice.

Item 3.i. Domestic Violence Protection: If you are a victim of domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult, and the landlord gives you a 30-, 60-, or 90-day notice to move because of the behavior of the perpetrator, the law protects you from being evicted for that reason. (You still have to pay the full rent, however, in the case where you've had an abusive now-former partner move out.) This defense is only available if a court restraining order, police protective order, or police report not more than six months old lists you as a victim or protected person.

Item 3.j. Other Affirmative Defenses: Sometimes landlords orally allow tenants to get behind on their rent or to make certain repairs to their premises in exchange for free rent, or they make other agreements on which the tenant relies because of a good relationship with the landlord. Then, when a falling-out occurs, the landlord will attempt an eviction on the basis of a particular tenant default and deny that any oral agreement was made. In such a case, you have an affirmative defense based on the agreement and should check this box and place the details on 3.k.

Here are some examples of other affirmative defenses you would detail in Item 3.k:

Eviction following Foreclosure. As explained in "Your Rights If Your Landlord Suffers Foreclosure" in Chapter 14, banks or third-party foreclosure-sale buyers must generally honor existing leases, and must in any event give 90 days' notice of termination where allowed in the case of a buyer who wants to live in the property, or to terminate a month-to-month tenancy. If the new owner has brought an unlawful detainer case against you and failed to comply with the law, you should check this box and place the details on 3.k, starting with, "Plaintiff has failed to comply with the federal "Protecting Tenants at Foreclosure Act of 2009" and state Code of Civil Procedure Section 1161b. (b), as follows: Then state the specifics, including what type of tenancy you had and why any notice provided was incorrect.

Landlord Hasn't Complied With Civil Code Section 1962. As discussed in Chapter 14, a landlord may not demand rent in a three-day notice for any period exceeding 15 days from the landlord's

failure to advise you in writing of the name and address of the person authorized to collect rents, and the normal days and hours that rent will be accepted. If you have not received this sort of notice, and didn't pay your rent because of truly not knowing where or how to pay it, you may assert this defense.

Landlord's Failure to Provide Advance Notice Regarding Tenant's Abandoned Property

A 30-, 60-, or 90-day notice must include language about the disposition of any property you leave behind after vacating. (See "Belongings You Leave Behind" in Chapter 12.) That said, we believe a termination notice without the necessary language regarding abandoned property is not necessarily defective on that account.

Item 4. Other Statements

Item 4.a: If you have moved out of the unit and have turned it over to the landlord, check this box. At this point, the lawsuit against you is no longer one for eviction, and the case is (or should be) converted to a normal civil action. (CC § 1951.2, 1952.3.) In a normal civil action, a landlord can claim rent (including post-termination daily "holdover rent"), as well as other damages he thinks you caused. The tenant can also file for affirmative relief (like asking to collect overpaid rent and for the return of your security deposit. If the landlord has not amended the Complaint to reflect the new nature of the lawsuit, you should also raise this in the "other statements" part of your answer.

Item 4.b: Although the landlord may not accept rent after the expiration of the notice to quit, the court will award the landlord the fair market rental value of the premises for the time between the expiration of the notice and the day the judgment is entered. This is normally computed by dividing the total rent amount by 30 to arrive at a daily rental, and then multiplying this amount by the number of days. If you believe that the "fair rental value" stated in the Complaint is too high, check this box. Then explain any habitability problems on the premises, any change in the neighborhood that might have affected rental value, or any other reason you think the landlord's estimate is excessive. If the action against you is based on nonpayment of rent, and you are defending the lawsuit on the basis that the landlord breached the implied warranty to provide habitable premises, you should have checked Box 3.a and explained why the premises are not worth what the landlord says they are. In this case, simply type "See item 3.a" in this space.

Item 4.c: This box gives you a chance to say anything relevant and not covered by the other boxes.

Although it is not required, it might be helpful to mention that eviction would result in an extreme hardship and that, should you not prevail at trial, you are entitled to "Relief from Forfeiture" (see "Stopping an Eviction," later in this chapter). You could write something like: "Eviction would result in an extreme hardship to myself and my family. In the event judgment is entered for plaintiff, defendants seek relief from forfeiture under Code of Civil Procedure Section 1179."

Item 5. Defendant Requests

Item 5.a: This item is self-explanatory. You don't want the court to meet any of the landlord's requests made in the Complaint, such as past due rent for damages. You indicate your specific requests for costs in the rest of Item 5. If your affirmative defense was the landlord's breach of the warranty of habitability (Item 3.a) or you believe the "fair rental value" stated in the Complaint is excessive, check Item 5.d. If you are going to hire an attorney, check Item 5.c, "reasonable attorney fees." You are entitled to reasonable attorney fees if you win with a court judgment and your rental agreement or lease provides for landlord's attorney fees. Obviously, you cannot get attorney fees if you did not have an attorney. If you believe you are entitled to some other remedy, provide details in Item 5.e.

Item 6. Attachments: If you have prepared any attachments, check the box here and list the total number of pages attached.

Item 7: If an unlawful detainer assistant helped you prepare your Answer form, you must provide the requested information.

Signing and Verifying Your Answer

Here are the rules:

- The Answer must be signed by all of the named defendants.
- The verification at the bottom of the Answer (the statement under penalty of perjury that the statements in the Answer are true) need be signed only by any one defendant.

Filing and Serving Your Answer

After you've prepared your Answer, here's how to file and serve it.

Step 1: Complete the document called Proof of Service by First Class Mail—Civil, following the instructions found in the section "Preparing the Motion to Quash," above. As explained in that section, you will find a blank form in Appendix C and a downloadable version on the Nolo website. Make several copies before using the Proof of Service, as you may need more later. The server must be a person over 18 and not a party to the action—that is, not named in the Complaint as a plaintiff or defendant. As a defendant, you cannot serve your own legal papers.

Step 2: Make two copies of your Answer and the unsigned but filled-in Proof of Service by Mail. Print the server's name on the last line of both copies of the Proof of Service.

Step 3: Attach one copy of the Proof of Service to each copy of your Answer.

Step 4: Have your server mail one copy of the Answer and attached unsigned Proof of Service to the landlord's attorney (listed on the Summons), or the landlord if there is no attorney. The papers must be mailed on the day indicated on the Proof of Service.

Step 5: Now have your server fill in the blanks in the last paragraph of the Proof of Service and sign it, stating that the mailing has occurred. Attach this original to your original Answer.

Step 6: Take the original Answer and Proof of Service and a copy to the court clerk. (It is possible to file papers by mail, but this is not advised. A postal service or clerk's office foul-up could cause grave problems given the short time limits in these kinds of cases.) Give the original set of papers to the clerk, who will stamp (or have you stamp) your copy package with a "filed" notation in the upper right-hand corner. This is your proof that you filed the originals with the clerk.

CAUTION

Make sure your Answer is filed within five days of the day the Complaint was served (or your Motion to Quash or Demurrer was overruled). If you miss this deadline, you may find yourself having to dig yourself out from under a default judgment obtained by the landlord. (See "The Complaint and Summons," above, for how to compute the five-day period.)

CAUTION

Don't file by mail. Though it is legal to file papers by mail, we don't recommend it. The time limits are so tight in unlawful detainer cases that a postal foul-up or a mishandling in the clerk's office could result in your papers not being filed on time and a default being entered against you.

Trial Setting and Demanding a Jury

It makes sense to file a Demand for Jury trial at your earliest opportunity—usually when you file your Answer. (CCP § 1171 guarantees the right to a jury trial.) You have nothing to lose (you can change your mind later). After you've filed your Answer, the landlord will file a Request to Set Case for Trial. The court will schedule the case as a jury trial and, in many jurisdictions, will automatically set a date for a pretrial settlement conference.

You will have to pay one day of jury fees at least five days before the trial date—unless the court

waives the requirement. (CCP § 631(c)(1).) If you later decide that you want a judge to decide your case, you can give up your right to a jury trial up to the time the case is assigned to a judge for trial. (You won't get your initial fees back, but if you win, you can claim them as a cost of the lawsuit. (CCP § 631.))

The Trial

After you file your Answer, the landlord may ask the court clerk to set the case for trial by filing a "Request to Set Case for Trial" with the court clerk. Having received this memo from the landlord, the clerk is supposed to set the case for trial within 20 days. (CCP § 1170.5(a).) You may file a motion to have this date extended, and it might be granted if you can show the judge that, for example, a key witness (such as you) must be out of town that day. Consult the *California Eviction Defense Manual* (CEB), which is available at law libraries, for how to file and serve this motion.

Requesting a jury trial often prompts the judge to try to get you and the landlord to settle the case before trial, which can be helpful to you. In the experience of most landlord-tenant lawyers, 12 ordinary people tend to be more sympathetic to tenants than one crusty old (or even young) judge. If, however, you will be representing yourself at trial, you might be better off having a judge decide the case. Judge trials are much more simple and informal than jury trials, which are usually too complicated for most non-lawyers to comfortably handle by themselves.

RESOURCE

If you decide to represent yourself at trial before a judge or a jury, consult *Win Your Lawsuit: Sue in California Superior Court Without a Lawyer,* by Judge Roderic Duncan (Nolo), for information on how to present your case.

A sample Demand for Jury Trial form is shown below.

FORM

You'll find a copy of the Demand for Jury Trial form in Appendix C, and the Nolo website includes a downloadable copy of this form. (See Appendix B for the link to the forms in this book.)

Here are instructions for completing, filing, and serving the Demand for Jury Trial.

CAUTION

Jury trials aren't free. If you request a jury trial, you will have to post about $150 with the court to pay for the jurors for one day of trial. If you win, you can recover these fees from the landlord. If the landlord posted the jury fees and wins, the landlord can recover these from you. You must pay the fee at least five days before trial, or you will lose the right to a jury trial. (CCP § 631(b).) (If you cannot afford the fee, you can ask the court to waive it by filling out a fee waiver form called "Request to Waive Additional Court Fees and Costs " (Judicial Council form FW-0021). Go to the Judicial Council website (www.courts.ca.gov/forms.htm) to download the form. You cannot use the Request to Waive Court Fees form (described above), because this form covers only filing fees, not jury fees.

Step 1: Complete the document called Proof of Service by First-Class Mail, following the instructions under "Preparing a Motion to Quash," above. You will find a blank form in Appendix C and a downloadable version on the Nolo website; if you don't have access to a computer, make several copies before using this form, as you may need more later. The server must be a person over 18 and not a party to the action—that is, not named in the Complaint as a plaintiff or defendant. As a defendant, you cannot serve your own legal papers.

Step 2: Make copies of Demand for Jury Trial and Proof of Service forms.

Step 3: Attach a copy of the unsigned Proof of Service to a copy of the Demand for Jury Trial.

Sample Demand for Jury Trial

TOM TENANT
1234 Apartment St.
Berkeley, CA 94710
510-123-4567

Defendant in Pro Per

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF ALAMEDA

BERKELEY/ALBANY DIVISION/BRANCH

LENNY LANDLORD, Plaintiff(s),

v.

TOM TENANT, Defendant(s).

Case No. 5-0258

DEMAND FOR JURY TRIAL

To the clerk of the above-entitled court:

Defendant(s) hereby demand a jury trial in this action.

Dated: February 20, 20xx

Tom Tenant
Tom Tenant

Step 4: Have your server mail one copy package to the landlord or the landlord's attorney, then fill in the last paragraph of the original Proof of Service and sign it.

Step 5: File the original Demand and original signed Proof of Service with the court. Have the court clerk stamp the second copy package for your files.

If you learn before trial which judge will hear the case, and you have reason to believe that this judge may not be fair to you, you may file a motion to disqualify the judge. (CCP § 170.6.) This is called a "peremptory challenge" and is described in the *California Eviction Defense Manual* (CEB). Ask other tenants, tenant lawyers, or others with experience in this courthouse, about which judges have a reputation for being hard on tenants.

File the motion at least five days before trial, together with a statement that you believe the judge will be prejudiced against you. You need not prove that the judge is prejudiced or even state detailed reasons for your belief—the disqualification is automatic. You may do this only once in any case. If you do it, you cannot be sure which judge will replace the one you disqualified—the next one might even be worse! So don't use your challenge lightly.

If you do not know before trial who your judge will be, be prepared to use your challenge on the morning of trial if you find out that you have been assigned to a judge who would be bad for tenants. Again, you only have one challenge, so get an idea beforehand how the various judges stack up in your particular court.

Getting ready for trial involves preparation, learning the procedure, and understanding how to present evidence. Many law books cover these subjects and it is often complicated. The CEB *Eviction Defense Manual* has some information and forms related to trial procedure and evidence. CEB also has a publication called *Civil Procedure During Trial*, which gives great detail on both procedure and rules of evidence.

On the morning of trial, judges will often try to make one last attempt at getting the case settled. They may send you to a separate judge or commissioner for this purpose. Once attempts at settlement have failed, you will be sent to the courtroom of the judge who will conduct the trial. If it is a jury trial, the judge will usually have a pretrial meeting to discuss how the trial will proceed, discuss how jury selection will take place (if you have a jury), and talk about some of the special rules of that particular judge (such as what times court will be in session, if exhibits should be exchanged, and so on). The judge may also hear motions about the case. For instance, there are motions to exclude certain documents, witnesses, or testimony.

Before the trial, carefully organize your witnesses, documents, and photographs; and any other evidence you think is important. Ask yourself what it would take to convince a neutral person that you are right, and then organize that evidence for the judge.

At trial, be courteous and respectful to everyone. The purpose of a trial is to resolve disputes in a civilized manner; it's not a forum for yelling, sarcasm, and the like. Address yourself to the judge and the witnesses only, not the other party or the opposing attorney. It's advantageous to be forceful and to stand up for your rights, and a serious mistake to be rude or unnecessarily hostile. The most important thing is to present your side of the case clearly and with as few complications as possible. Try not to be repetitive. If you confuse, bore, or annoy the judge, you lessen your chance of winning.

TIP

Watch and learn. If you are worried about representing yourself, watch several contested unlawful detainer trials before your court date. You'll learn what to do and, equally important, what to avoid.

If Your Trial is Before a Jury

The first part of a jury trial will be to select a jury. Here you get to ask the potential jurors questions about who they are ("Are you a tenant? Have you or someone close to you ever been evicted?"). Sample

questions, called "voir dire" are available in the CEB *Eviction Defense Manual*. You will be allowed to exclude a certain number of potential jurors simply because you don't think they will be on your side. Usually, 12 jurors are ultimately chosen. To win a trial, either side has to get the votes of nine of the 12 jurors. If the landlord (or you) can only get eight, then you have a "hung jury."

Opening statements

After the jury has been picked, each side will be allowed to make an opening statement. First the landlord tells the jury about his case, then you get to tell the jury about yours. During the opening statement, each side can talk about the evidence (documents and testimony) that will be presented. This is not the time when you actually argue the case. For instance, you could say "the evidence will show that Lenny Landlord was told about the roof leaking on several occasions, both orally in writing. The evidence will further show that he refused to fix it. I called the building inspector who then issued a violation notice. The evidence will also show that Lenny Landlord issued his Notice of Termination of Tenancy a few weeks after he received the notice." These are all facts that you intend to present to the jury during the trial. You cannot argue the case at this point, however, by saying something like: "Lenny Landlord is a slumlord who is retaliating against me." Stick to the facts; the argument will come later.

Presenting the Case

The landlord gets to present his case first. This will include testimony from the landlord and from others, as well as presenting documents. The landlord (and you) must present "admissible evidence." This is evidence that is relevant to the case, and presented in a proper form. For instance, a witness can testify only about what he personally saw or heard. He can't guess or speculate or provide an opinion. You can object if the landlord tries to elicit such testimony or, if the testimony is already given, ask that it be stricken. Again, more information about presenting evidence is available from the CEB *Eviction Defense Manual* and CEB *Civil Procedure During Trial* manuals.

After the landlord presents his case, you get to present yours. This is where careful preparation really pays off. Have your witnesses and documents organized in an order that makes sense, and to the extent possible, follows the logic of your case. Then it's just a matter of presenting it. Your landlord might object to some of your evidence (if only to make you nervous), so be prepared to defend how the evidence is relevant and presented properly.

After you present your defense the landlord has the option of presenting additional evidence, but only to rebut your evidence. You would then be allowed to rebut the evidence the landlord presents in his rebuttal.

Arguments

After the landlord and you have presented the evidence, the landlord will be allowed to give a closing argument, which discusses the evidence and why the jury should vote to evict you. Next comes your closing argument, where you try to prove just the opposite. Because the landlord has the burden of proof in eviction cases, he will be allowed to make a rebuttal argument.

The judge will then instruct the jury about points of law related to the case. Sample Jury Instructions are available in the CEB *Eviction Defense Manual*. After instruction, the jury will deliberate and render its verdict. Once a verdict is rendered, judgment will be entered according to the verdict.

If Your Trial is Before a Judge (a "Court Trial")

Court trials proceed much the same way as jury trials, except that there is no jury selection, jury instruction, or jury deliberation. The judge will hear opening arguments, presentation of evidence, and closing arguments. After closing arguments, the judge can issue a decision right then, or can take the matter "under submission" and decide later. If the case takes more than eight hours,

you can request that the judge prepare a written "Statement of Decision" explaining his ruling. (See CCP § 632 and California Rule of Court 3.1590 for more information.) Making the written request may give you several extra days in the event you lose the case.

Setting Aside a Default Judgment

If you miss the deadline for responding to the landlord's Complaint, the landlord may ask the court for a default judgment against you. That means you lose without a trial and the landlord has the legal right to evict you. If this happens, you may file a motion asking the court to set aside the default judgment. If the motion is granted, you may then file your Answer and have your trial.

To persuade the judge to grant your motion to set aside a default, you must show all of the following:

- That you have a pretty good excuse (such as illness) for your failure to respond to the Summons in five days. "I didn't know how to respond, and it took me a few days to get hold of a copy of *California Tenants' Rights*" might work, but don't count on it.
- That you did not unnecessarily delay too long in filing your motion to set aside the default. There is no set period of time for which a delay is or is not excusable. It depends on the facts of each case.
- That you have a defense to the lawsuit.

In addition, be sure to ask for a stay (postponement) of the eviction until the court rules on your motion to set aside the default.

Moving to set aside a default requires a lot of paperwork. More importantly, you have to act very quickly. The sheriff will be knocking at your door very soon, if he hasn't already. Don't wait until the last minute! We recommend that you try to get a lawyer or tenants' rights advocate to help you with it. If you still want to do it yourself, the necessary forms and procedures are contained in the *California Eviction Defense Manual,* published by Continuing Education of the Bar (CEB), and available in most county law libraries.

Discovery: Learning About the Landlord's Case

"Discovery" is the process of finding out what evidence the other side has before the trial begins, so you can prepare your own case to meet it. Discovery is conducted in two basic ways.

One is to question the other party face to face in a proceeding called a deposition (discussed below).

The second is to send the other party a written document that specifies what is being sought. This document typically consists of:

- questions (interrogatories)
- a request that certain documents be produced for inspection
- a request that a physical inspection of the premises be allowed
- a request that certain facts be admitted as true, or
- all of the above.

You can make any of these requests following the instructions below. The law provides a set period of time within which a party must respond to discovery requests. The response must be given within five days, or within ten days if the request was served on you by mail. (CCP §§ 1013, 2030.260(a), 2031.260, 2033.250.)

TIP

You can begin the discovery process at any time after you are lawfully served with the Summons and Complaint. (However, if you are contesting service —by filing a Motion to Quash—then you have to wait until after the hearing before initiating discovery.) The sooner you start discovery, the better. Landlords or their attorneys often "stonewall" discovery by objecting, giving evasive answers, or not answering at all. You may need the time to ask the court to "compel" the landlord to comply with the request.

Request for Inspection

Use a Request to Inspect to make the other side let you see and copy any documents or other things before trial. You may want to see copies of leases, building inspector's reports, or checks.

The landlord must respond to your request within five days. (CCP § 2031.260.) Add five days to each of these periods if you mailed the request for inspection to the landlord (or to the landlord's attorney), instead of personally serving them. (CCP § 1013.) If the landlord refuses to respond adequately to your discovery request within that time, you may file a motion to compel and ask the court to impose sanctions on the landlord, which include paying your costs or preventing the landlord from using certain evidence. (CCP § 2031.310.)

Take a look at our sample Request for Inspection form, shown below.

FORM

You'll find a copy of the Request to Inspect (official name, Request to Inspect and for Production of Documents) in Appendix C, and the Nolo website includes a downloadable copy of this form. (See Appendix B for the link to the forms in this book.)

You'll need to fill in your name, address, and telephone number; the county where you are being sued; the court district and the case documents you are requesting; and where and when you want to see and copy these documents. If you want to inspect or photograph the rental premises, you'll also need to specify the location, date, and time you wish to do this.

After you've prepared your Request to Inspect, you must file and serve it.

Step 1: Make one copy of your Request to Inspect.

Step 2: Complete the document called Proof of Service by First-Class Mail, following the instructions included in "Preparing the Motion to Quash," above.

FORM

You will find a blank Proof of Service by Mail form in Appendix C and a downloadable copy on the Nolo website. If you don't have access to a computer, make several copies of the Proof of Service form before using it, as you may need more later.

The server must be a person over 18 and not a party to the action—that is, not named in the Complaint as a plaintiff or defendant. As a defendant, you cannot serve your own legal papers.

Step 3: Make a copy of the Proof of Service by Mail, print your server's name on the last line of the copy, and attach it to the copy of your Request to Inspect.

Step 4: Have your server place these papers in the mail with first-class postage attached.

Step 5: Now have your server fill in the blanks in the last paragraph of the Proof of Service and sign it.

Step 6: Keep the originals of your Proof of Service by Mail and Request to Inspect in your records. You need not file these papers with the court clerk unless a dispute arises over your request.

Interrogatories

The discovery devices most often used in unlawful detainer cases are written interrogatories. These are questions you pose that the other side must answer. Of course, the other side may pose their own set of questions to you, too. You can use a set of Form Interrogatories designed for eviction cases. (See CCP § 2030.010-2030.410.)

FORM

You'll find a copy of the Form Interrogatories—Unlawful Detainer in Appendix C, and the Nolo website includes a downloadable copy of this form. (See Appendix B for the link to the forms in this book.)

Here is how to use the interrogatories:

- **Read the interrogatories.** If any is relevant to the issues in your case, check off the number

Sample Request for Inspection

TOM TENANT
1234 Apartment St.
Berkeley, CA 94710
510-123-4567

Defendant in Pro Per

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF ALAMEDA

BERKELEY/ALBANY DIVISION/BRANCH

LENNY LANDLORD, Plaintiff(s), v. TOM TENANT, Defendant(s).	Case No. 5-0258 REQUEST TO INSPECT AND FOR PRODUCTION OF DOCUMENTS (Code of Civil Procedure Sec. 2031.101–2031.510)

To: _____, Plaintiff, and _____, Plaintiff's attorney:

Defendant requests that you produce and permit the copying of the following documents: _____ [*describe documents*] _____.

Defendant requests that you produce these documents at the following address: [*your address or or any other location*], at the following date and time: [*within 5 days, plus 5 days, if this request is served by mail*].

Defendant further requests permission to enter, inspect, and photograph the premises located at _____ [*address of premises you wish to inspect, otherwise leave blank*] _____ at the following date and time: [*within 5 days, plus 5 days, if this request is served by mail*].

Dated: _____

Tom Tenant
Tom Tenant

of that interrogatory in the proper box of the "Form Interrogatories–Unlawful Detainer."

- **Do not simply check off every box in the Form Interrogatories.** If you do, the landlord may take you to court and get sanctions against you (usually a fine) based on the claim that you are using the interrogatories for purposes of harassment and delay. Make sure that the interrogatory pertains to some denial or affirmative defense you raised—for example, in your Answer—and that the landlord's answer might help you know what to expect at trial.
- **The Judicial Council Form Interrogatories provided in this book include instructions; here are additional ones:**

Step 1: Complete the document called Proof of Service by First-Class Mail—Civil, following the instructions in "Preparing the Motion to Quash," above. You will find a blank form in Appendix C, and a downloadable version on the Nolo website; if you do not have access to a computer, make several copies before using the proof of service form, as you may need more later. The server must be a person over 18 and not a party to the action—that is, not named in the Complaint as a plaintiff or defendant. As a defendant, you cannot serve your own legal papers.

Step 2: Make one copy of your Interrogatories and the Proof of Service by First-Class Mail. Fill in the server's name on the last line of the copy of the Proof of Service.

Step 3: Attach the copy of the Proof of Service to the copy of your Interrogatories.

Step 4: Have your server mail the copy package (the Interrogatories and the Proof of Service) to the landlord's attorney (listed on the Summons) or the landlord, if there is no attorney. The package must be mailed on the day indicated on the Proof of Service. You may also include a full set of the Interrogatories themselves if you wish.

Step 5: Now have your server fill in the blanks in the last paragraph of the Proof of Service and sign it. Attach this original to your original Interrogatories. Place these documents in your file. You don't have to file them with the court unless a dispute arises.

The landlord or landlord's attorney must respond to your interrogatories within five days. (CCP § 2030.260(a)), plus five days if you served them by mail. If the landlord (or landlord's attorney) refuses to respond adequately within that time, you may ask the court to impose sanctions on the other side. (CCP §§ 2030.290-2030.300.)

The Deposition

Depositions are oral statements made under oath. The other party must sit down with you in your lawyer's office or another site and answer questions. You must arrange (and pay for) a court reporter to take down the questions and answers. The transcript can be used against the person if he or she tries to change his or her story at trial.

Explaining how to set up and conduct a deposition is beyond the scope of this book. More to the point is what happens if the landlord's attorney serves a notice of deposition on you, telling you to appear somewhere at a certain time for a deposition. All you have to do is appear and answer the questions. However, you may be tricked into giving an answer that later comes back to haunt you. For this reason, if possible, it is often a good idea to have a lawyer there to help you avoid the traps set by the landlord's attorney.

RESOURCE

For more information on how to prepare for a deposition and how to give one, see *Nolo's Deposition Handbook,* by Paul Bergman and Albert Moore (Nolo). See www.nolo.com for a sample chapter and complete table of contents for this book.

The Request to Admit

You can find out just what you and the landlord agree and disagree about by requesting the landlord

to admit certain statements that you believe to be true. If they are admitted, it saves you the trouble of having to prove them in court. If, on the other hand, the landlord denies a statement, and you later prove it to be true, the landlord can be required to reimburse you for the cost of the proof. We don't provide you the forms for this discovery device, but if you are interested in using it, consult *California Civil Discovery Practice,* published by Continuing Education of the Bar (CEB) and available in most law libraries.

Negotiating a Settlement

At any point in a dispute, you may negotiate a settlement with the landlord. The keys to any settlement are (1) that each side has something the other wants, and (2) that each side is willing to talk to the other in a reasonable manner.

The landlord usually wants you to get out, pay back rent, or both. The owner wants minimum expense and hassle. You have the power to cause the landlord expense and trouble by your use of the defenses and procedural tools described in this chapter. Therefore, the landlord may be willing (reluctantly) to give you more time to get out, reduce the claim for back rent, or even pay your moving expenses if you are willing to give up your defenses and procedural tools and agree to get out on a specific, mutually agreeable day. If you are planning to move anyway, this sort of compromise may make excellent sense.

Of course, depending on the facts of your situation, you might instead want to hang tough, go to trial, and win everything. But you always run the risk of losing. The landlord is often in the same boat. What this amounts to is that, commonly, it may be in both of your interests to lessen your risks by negotiating a settlement both of you can live with.

> **EXAMPLE:** When Tom fails to pay his rent of $1,000 on May 1, his landlord, Lenny, serves a three-day notice on him, and when that runs out without Tom paying the rent, Lenny sues Tom for an eviction order and a judgment for the $1,000. Tom's Answer says that Lenny breached the implied warranty of habitability by not getting rid of cockroaches. Lenny tells Tom that at trial Lenny will try to prove that the cockroaches were caused by Tom's poor housekeeping. Lenny thinks he will win the trial, and Tom thinks that he will win. Each of them is sensible enough to know, however, that they might lose—and that it is certain that a trial will take up a lot of time and energy (and maybe some costs and attorney fees). So they get together and hammer out a settlement agreement: Tom agrees to get out by July 1, and Lenny agrees to drop his lawsuit and any claim for back rent.

Here are a few pointers about negotiation:

- It is common for the tenant to get extra time to move and receive forgiveness of past rent (or some of it) plus, in some instances, moving expenses. Sometimes tenants bargain for even some financial help with a new security deposit, as a condition of moving out without a court fight.
- Another framework is to "pay and stay." Under this scenario, the tenant pays the back rent (or cures the breach) and gets to stay in the unit. Sometimes a landlord will demand that the tenant also pay his court costs for having to bring the eviction case. Where the tenant owes a lot of back rent, a payment plan can be arranged so that the tenant pays in installments. If the tenant doesn't pay on time, the agreement could allow the landlord to get a judgment for possession without a trial.
- Similar to the above is a probation-like scenario. Let's say the tenant is accused of disturbing the neighbors and causing a nuisance. Under the agreement, the tenant could agree to behave and if the tenant disturbs the neighbors again (for instance, within the next six months), the landlord could get a judgment for possession without a trial.
- Be courteous, but don't be weak. If you have a good defense, let the landlord know

Sample Settlement of Unlawful Detainer Action

SETTLEMENT AGREEMENT

1. Tom Tenant ("tenant") resides at the following premises: 1234 Apartment Street, Berkeley, CA 94710 ("premises").

2. Lenny Landlord ("landlord") is the owner of the premises.

3. On January 8, 20xx landlord caused a Summons and Complaint in unlawful detainer to be served on tenant. The complaint was filed in the Superior Court for the County of Alameda, Berkeley-Albany District, and carries the following civil number: 5-0258.

4. Landlord and tenant agree that tenant shall vacate the premises on or before March 1, 20xx. In exchange for this agreement, and upon full performance by tenant, landlord agrees to file a voluntary dismissal with prejudice of the Complaint specified in clause #3.

5. Also in exchange for tenant's agreement to vacate the premises on or before the date specified in clause #4, landlord agrees to:

(*Choose one or more of the following*)

☑ Forgive all past due rent

☐ Forgive past due rent in the following amount: $_____

☐ Pay the tenant $_____ to cover tenant's moving expenses, new deposit requirements, and other incidentals related to the tenant moving out.

6. Any sum specified in clause #5 to be paid by the landlord shall be paid as follows:

(*Choose one or more of the following*)

☑ Upon tenant surrendering the keys to the premises

☐ Upon the signing of this agreement

☐ $_____ upon the signing of this agreement and $_____ upon tenant surrendering the keys

☐ in the following manner:

Sample Settlement of Unlawful Detainer Action (continued)

7. The tenant's security deposit being held by landlord shall be handled as follows:

☐ restored in full to the tenant upon surrender of the keys

☑ treated according to law

☐ other: _____

_____

8. Tenant and landlord also agree:

a) to waive all claims and demands that each may have against the other for any transaction directly or indirectly arising from their Landlord-Tenant relationship

b) that this settlement agreement not be construed as reflecting on the merits of the dispute, and

c) that landlord shall not make any negative representations to any credit reporting agency or to any other person or entity seeking information about whether tenant was a good or bad tenant.

9. Time is of the essence in this agreement. If tenant fails to timely comply with this agreement, landlord may immediately rescind this agreement in writing and proceed with his or her legal and equitable remedies.

10. This agreement was executed on January, 20 xx at Berkeley, California.

Signed: Tom Tenant
Tom Tenant

Signed: Lenny Landlord
Lenny Landlord

that you have the resources and evidence to fight and win if the landlord won't agree to a reasonable settlement.
- If you are in a rent control city and your defense is that the landlord breached rent control rules, consult the staff at your local rent board. They may be able to help.
- Many courts have trained volunteer mediators who help self-represented parties try to work out settlements on the eve of trial. Be open to this type of mediation, as it can be very helpful. Before trial, you can avail yourself of a local neighborhood mediation service, perhaps for a small fee. Look in your phone book yellow pages under "mediation," or do an Internet search using the name of the city or county in which the property is located, and the word "mediation." (See "Mediation" in Chapter 18 for more on the subject.)
- Put the settlement agreement in writing. If you can (and you may not be able to), try to avoid agreeing to a "stipulated judgment," which enables the landlord to get you out very quickly if he thinks you are not abiding by the settlement agreement. Also, credit reporting agencies get records of judgments, so a stipulated judgment may hurt your credit rating.
- If your lease or rental agreement has an attorney fees clause, you'll want to avoid having to pay the landlord's fees (and court costs), which may be considerable even though the case hasn't proceeded very far. Include a statement in your settlement agreement that there is no "prevailing party" and that neither side owes the other for fees and costs.

A sample Settlement Agreement is shown above; it may be used with appropriate modification.

FORM

You'll find a copy of the Settlement Agreement in Appendix C, and the Nolo website includes a downloadable copy of this form which you can edit to fit your particular situation. (See Appendix B for the link to the forms in this book.)

Summary Judgment

Although the landlord is entitled to a trial date within three weeks after you file your Answer, landlords don't have to wait that long to obtain a judgment if they can convince the court that there is no substantial disagreement over the facts. For instance, if you both agree that you have been conducting a mail order business from your apartment, but disagree as to whether this is a breach of the lease, which limits the use of the premises to residential use, the court can decide the case without holding a full trial. This speedy procedure is termed a "summary judgment."

If the landlord files a Motion for Summary Judgment (few do so anymore, because the filing fee for this type of motion is over $500), you will be served with the Notice of Motion and an accompanying Declaration setting out the landlord's version of the facts. Under Code of Civil Procedure Sections 1170.7 and 1013, and Rule 3.1351(a), Cal. Rules of Court, the landlord must personally serve the motion papers on you no later than five days in advance of the hearing, or ten days if they're served by mail. If you wish to contest the motion, you should file and serve a statement of your own, called a "Declaration in Opposition to Motion for Summary Judgment," setting forth your version of the facts. Your statement must respond specifically to the facts that the landlord, in his declaration, states were undisputed. If you don't contradict the landlord's statements, the judge will consider them undisputed. You can support your statement with declarations (from you or others), or references to other documents such as the Complaint. If your statement contradicts the landlord's facts in important particulars, and the difference in facts is important to the case, the judge should deny the motion and require the landlord to proceed to trial.

Refer to the instructions for completing the Declaration accompanying the Motion to Quash for the required format. If the landlord or landlord's attorney personally serves the motion

on you, you're entitled to only five days' notice. This does not allow you much time to respond. Though the law does not say how soon before the hearing your opposing declaration needs to be filed, get it filed as soon as you can. Filing it the day before court, or worse, bringing it with you to court on the day of the hearing, may result in your losing the case. Serve it according to the method described for serving the Answer. For additional information, consult the *California Eviction Defense Manual*, published by Continuing Education of the Bar (CEB), available in most law libraries.

Although technically you can oppose the motion orally, we advise against it. California Rule of Court 3.1351(b) does provide, "Any opposition to the motion and any reply to an opposition may be made orally at the time of hearing." In theory, this means that you should be able to go to the hearing and ask the judge to place you under oath to refute any statement made in the landlord's written declaration. However, we think it is imperative that you file a written declaration under penalty of perjury, and serve it on the other party (or their attorney), at least the day before the hearing, as allowed under subdivision (c) of this rule. Be sure to deliver a courtesy copy to the courtroom that will hear the motion. We say this because this rule is fairly new, some judges will not be acquainted with it, and they may be strongly inclined to rule against you if you simply show up without filing a written opposition. Remember, you must personally or otherwise serve your opposition papers on the landlord or his attorney in time to be received at least one court day before the hearing.

The Judgment

If you win, the landlord cannot evict you, and you can get a judgment for your court costs—mainly your filing fee and jury fees, if you paid them. If your lease or rental agreement provides for attorney fees for the prevailing party—or just for the landlord—you can recover them, too, if you hired an attorney. (CCP § 1717.)

If the landlord wins, the judgment will award possession of the premises. It may also award money for unpaid rent (if the action was based on nonpayment of rent), daily rent after the date the tenancy was terminated, costs, and attorney fees (if provided by the lease or rental agreement). If you do not pay up, the landlord may file the appropriate forms to garnish your wages and bank accounts.

If you asserted a habitability defense in your Answer, and the judge finds the landlord substantially breached the habitability requirements, you will be required to pay into the court, within five days, the amount the judge determines is the reasonable rental value of the premises (in their "untenantable state") up to the time of the trial. If you don't make the payment on time, you will not be the "prevailing party" for purposes of awarding attorney fees and costs, and the court must award possession of the property to the landlord. (CCP § 1174.2.) The landlord may then try to collect the money part of the judgment—including court costs and applicable attorney's fees—and the court must award possession of the property to the landlord. For this reason, it's very important to pay any reduced rent the judge ordered you to pay. Not doing so can convert a partial win into a big loss—snatching defeat from the jaws of victory.

If you do make your payment on time and you are the "prevailing party," the court can order the landlord to make repairs and to charge only the reasonable rental value of the premises until the repairs are made. The court can maintain continuing supervision over the landlord until the repairs are completed. (CCP § 1174.2.)

If you lose the case, the landlord will get a judgment for money as well as possession of the premises. The landlord will then get a writ of execution and deliver it to the Sheriff's Department. After a few days, sometimes weeks, the Sheriff will post a Notice to Vacate on your front door (or hand it to you). The Notice will say that the Sheriff will come out in five days to physically remove you—although the Sheriff often takes longer.

Stopping an Eviction

Even if you lose an eviction lawsuit, the judge may give you "relief from forfeiture" of your tenancy—that is, save you from eviction if you can show hardship. For example, suppose you were temporarily out of work and fell behind in your rent, but you now have a job and can pay all the back rent. Furthermore, your children go to a neighborhood school and there is no alternative housing in the area that will allow them to continue at that school. The judge may stop the eviction. (CCP §§ 1179 and 1174(c).)

To persuade the judge to do this, you will probably have to show two things:

- that the eviction would cause a severe hardship on you or your family—for example, because your kids are in school, or you cannot find other housing, or you would have to move away from your job, or you are elderly or handicapped, and
- that you are willing and able to pay both the money you owe the landlord (for back rent and costs and fees, if there is a costs and fees clause in your lease or rental agreement), and the rent in the future.

How do judges determine whether the hardship is severe enough to grant relief? The mere fact that you have to move is not enough without other aggravating factors. The court will likely balance the hardship you will suffer if you are evicted against the prejudice to the landlord if the relief is granted. In doing so, the court looks at all the underlying facts, including the nature of the action (the reason for the eviction), whether the tenant's actions were willful or in bad faith, and whether the landlord's actions were in good or bad faith. *Thrifty Oil v. Batarse,* (1985) 174 Cal.App.3d 770.

FORM

You will find a blank Application and Declaration for Relief From Eviction form, a Notice of Motion and Points and Authorities for Relief form Eviction, plus an Order Granting Stay of Eviction, in Appendix C and downloadable versions on the Nolo website. Samples are not included in this chapter.

Here are the instructions for completing these forms.

Step 1: Fill in the blank Application and Declaration for Relief From Eviction form, using the guidelines mentioned above.

Step 2: Complete the document called Proof of Service by Mail (see the instructions in "Preparing the Motion to Quash," above). You will find a blank form in Appendix C and a downloadable version on the Nolo website; if you don't have access to a computer, make several copies before using this form, as you may need more later. The server must be a person over 18 and not a party to the action—that is, not named in the Complaint as a plaintiff or defendant. As a defendant, you cannot serve your own legal papers.

Step 3: Make copies of the Application and Declaration for Relief From Eviction and Proof of Service forms.

Step 4: Attach a copy of the unsigned Proof of Service to a copy of the Application and Declaration for Relief From Eviction.

Step 5: Have your server mail one copy package to the landlord or his attorney, then fill in the last paragraph of the original Proof of Service and sign it.

Step 6: File the original Application and Declaration for Relief From Eviction, the proposed Order (the judge will complete it), and the original signed Proof of Service with the court. Have the court clerk stamp the second copy package for your files.

How a Tenant's Bankruptcy Affects Evictions

Whether a not a landlord can legally evict a tenant who is filing for bankruptcy depends on when you file to do so. (For details, see "Stopping an Eviction by Filing for Bankruptcy" in Chapter 14.)

Sample Application for Stay of Eviction

TOM TENANT
1234 Apartment St.
Berkeley, CA 94710
510-123-4567

Defendant in Pro Per

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF ALAMEDA

BERKELEY/ALBANY DIVISION/BRANCH

LENNY LANDLORD, Plaintiff(s), v. TOM TENANT, Defendant(s).	Case No. 5-0258 APPLICATION AND DECLARATION FOR STAY OF EVICTION

Defendant(s) _____

_____ hereby apply for stay of execution from any writ of restitution or possession in this case, for the following period of time:

_____.

Such a stay is appropriate in this case for the following reason(s): _____

_____

_____.

I declare under penalty of perjury that the above statements are true and correct to the best of my knowledge.

Dated: February 20, 20xx

Tom Tenant
Tom Tenant

Postponing an Eviction

Even if the judge will not stop the eviction, the judge may postpone (stay) it for a limited time, for a good reason—for example, to give you more time to find another place—or to let you stay where you are during your appeal. If you need time to find another place, explain how difficult it is to locate available housing in your city and ask for a stay of about 30 days. File an application for a stay as soon as possible after you receive notice of the judgment.

If you seek a stay during an appeal, you must show the court that (1) you will suffer "extreme hardship" if you are evicted, and (2) that the landlord will not be hurt by the stay. The judge will condition the stay on your paying rent into court as it comes due. The court may also impose other conditions on the stay. If the trial court denies a stay during appeal, you may ask the appellate court to grant a stay. (CCP § 1176.) You will probably need a lawyer's help to accomplish this.

You will find a sample Application and Declaration for Stay of Eviction above.

FORM

You'll find a copy of the Application and Declaration for Stay of Eviction form plus Order Granting Stay of Eviction in Appendix C, and the Nolo website includes a downloadable copy of this form. (See Appendix B for the link to the forms in this book.)

Here are the instructions for completing them.

Step 1: Complete the document called Proof of Service by First-Class Mail, following the instructions found in "Preparing the Motion to Quash," above. You will find a blank form in Appendix C and a downloadable version on the Nolo website; if you don't have access to a computer, make several copies before using this form, as you may need more later. The server must be a person over 18 and not a party to the action—that is, not named in the Complaint as a plaintiff or defendant. As a defendant, you cannot serve your own legal papers.

Step 2: Make copies of the Application and Declaration for Stay of Eviction and Proof of Service forms.

Step 3: Attach a copy of the unsigned Proof of Service to a copy of the Application for Relief From Eviction.

Step 4: Have your server mail one copy package to the landlord or the landlord's attorney, then fill in the last paragraph of the original Proof of Service and sign it.

Step 5: File the original Application and Declaration for Stay of Eviction, the proposed Order (the judge will complete it) and the original signed Proof of Service with the court. Have the court clerk stamp the second copy package for your files.

Appeal From an Eviction

To appeal a court's eviction order, you must file a paper called "Notice of Appeal and Notice to Prepare Clerk's Transcripts" with the clerk of the court. You must file it within 30 days of receiving notice that judgment was entered against you. The appeal is to the Appellate Division of the Superior Court.

On appeal, you may argue only issues of law, not fact. This means that you may argue that the trial court erred by ruling that, for example, there can be no breach of the implied warranty of habitability if the lease says that the tenant waives his rights under this doctrine—an issue of law. But you may not argue that the judge was wrong in believing the landlord's testimony rather than yours, because that is an issue of fact. After you file your Notice of Appeal, the Appellate Division will tell you when your brief (the document in which you argue points of law) must be filed in that court.

Appeals are pretty technical, and we recommend that you get a lawyer if possible.

Notice of Appeal and Notice to Prepare Clerk's Transcripts

TOM TENANT
1234 Apartment St.
Berkeley, CA 94710
510-123-4567

Defendant in Pro Per

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF ALAMEDA

BERKELEY/ALBANY DIVISION/BRANCH

LENNY LANDLORD ,) Case No. 5-0258
)
,)
Plaintiff(s),) NOTICE OF APPEAL AND NOTICE
)
v.) TO PREPARE CLERK'S TRANSCRIPT
)
TOM TENANT ,)
)
,)
Defendant(s).)
)

Defendant(s) _____

_____ hereby appeal to the Appellate Department of the Superior Court.

Defendant(s) hereby request that a Clerk's Transcript be prepared, and that this transcript include all documents filed in this action and all minute orders and other rulings and judgments issued by the court in this action.

Dated: _____ Tom Tenant
Tom Tenant

CAUTION

Filing a Notice of Appeal does not automatically stop the sheriff or marshal from carrying out an eviction. To do that, you must seek a stay of the eviction from the trial court judge, as discussed in the preceding section. If you plan to appeal and feel you have a good argument that the trial court misinterpreted the law, include these facts in your application for the stay.

You will find a sample Notice of Appeal form above.

FORM

You'll find a copy of the Notice to Appeal and Notice to Prepare Clerk's Transcript in Appendix C, and the Nolo website includes a downloadable copy of this form. (See Appendix B for the link to the forms in this book.)

Here are the instructions for completing the Notice of Appeal:

Step 1: Complete the document called Proof of Service by First-Class Mail, following the instructions found in "Preparing the Motion to Quash," above. You will find a blank form in Appendix C and a downloadable version on the Nolo website; if you don't have access to a computer, make several copies before using this form, as you may need more later. The server must be a person over 18 and not a party to the action—that is, not named in the Complaint as a plaintiff or defendant. As a defendant, you cannot serve your own legal papers.

Step 2: Make copies of the Notice of Appeal and Proof of Service forms.

Step 3: Attach a copy of the unsigned Proof of Service to a copy of the Notice of Appeal.

Step 4: Have your server mail one copy package to the landlord or the landlord's attorney, then fill in the last paragraph of the original Proof of Service and sign it.

Step 5: File the original Notice of Appeal and original signed Proof of Service with the court. Have the court clerk stamp the second copy package for your files.

After the Lawsuit—Eviction by the Sheriff or Marshal

If the landlord wins the eviction case in court (or by default, because you never responded in writing to the landlord's lawsuit within the time allowed), the judge will sign a "writ of possession." The landlord will give this writ to the sheriff's or marshal's department and pay a fee, which will be added to the judgment against you. A deputy sheriff will serve the writ on you, along with an order that you vacate within five days. It might take the sheriff a few days to serve you with the writ. Some sheriffs serve these writs only on certain days of the week.

If you are served with the writ and are not out in five days, the sheriff or marshal will return and physically evict you and your family. That official is not allowed to throw your belongings out with you. Neither is the landlord, who must store them. (You may have to pay storage fees to get them back. See Chapter 12.)

If you are served with a five-day notice to vacate by the sheriff, it's time to move. It is much better to manage your own moving than be thrown out by the sheriff.

What if you occupied the premises on or before the date the eviction action was filed, but you are not named in the writ of possession or were not served with a Prejudgment Claim of Right to Possession (discussed under "What If a Tenant Is Not Named in the Complaint," above)? If you're in this situation, you can delay your eviction by filing a form called a "Claim of Right to Possession and Notice of Hearing" after the sheriff serves the writ of possession on you or other tenants. (CCP § 1174.3.) The sheriff or marshal who serves the writ of possession is required by statute to serve a copy of the form at the same time. We have included a sample here.

Claim of Right to Possession and Notice of Hearing

CP10

CLAIMANT OR CLAIMANT'S ATTORNEY (*Name and Address*): TELEPHONE NO.:	*FOR COURT USE ONLY*
ATTORNEY FOR (*Name*):	
NAME OF COURT: STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	CASE NUMBER:
Plaintiff: Defendant:	*(For levying officer use only)* Completed form was received on Date: _____ Time: _____ By: _____
CLAIM OF RIGHT TO POSSESSION AND NOTICE OF HEARING	

Complete this form only if ALL of these statements are true:

1. You are NOT named in the accompanying form called *Writ of Possession*.
2. You occupied the premises on or before the date the unlawful detainer (eviction) action was filed. *(The date is in the accompanying Writ of Possession.)*
3. You still occupy the premises.
4. A *Prejudgment Claim of Right to Possession* form was NOT served with the *Summons and Complaint*, OR this eviction results from a foreclosure.

NOTICE: If you are being evicted because of foreclosure, you have additional rights and should seek legal assistance immediately.

I DECLARE THE FOLLOWING UNDER PENALTY OF PERJURY:

1. My name is *(specify):*
2. I reside at *(street address, unit no., city and ZIP code):*
3. The address of "the premises" subject to this claim is *(address)*:

☐ Check here if this property was foreclosed on.

4. On *(insert date):* , the owner, landlord, or the landlord's authorized agent filed a complaint to recover possession of the premises. *(This date is the accompanying Writ of Possession.)*
5. I occupied the premises on the date the complaint was filed *(the date in item 4)*. I have continued to occupy the premises ever since.
6. I was at least 18 years of age on the date the complaint was filed *(the date in item 4)*.
7. I claim a right to possession of the premises because I occupied the premises on the date the complaint was filed *(the date in item 4)*.
8. I was not named in the *Writ of Possession*.
9. I understand that if I make this claim of possession, a court hearing will be held to decide whether my claim will be granted.
10. *(Filing fee) To obtain a court hearing on my claim,* I understand that after I present this form to the levying officer I must go to the court and pay a filing fee of $ or file with the court *"Application for Waiver of Court Fees and Costs."* I understand that if I don't pay the filing fee or file the form for waiver of court fees within 2 court days, the court will immediately deny my claim.
11. *(Immediate court hearing unless you deposit 15 days' rent)* To obtain a court hearing on my claim, I understand I must also present a copy of this completed complaint form or a receipt from the levying officer. I also understand the date of my hearing will be set immediately if I do not deliver to the court an amount equal to 15 days' rent.

(Continued on reverse)

Claim of Right to Possession and Notice of Hearing (continued)

CP10

Plaintiff: Defendant:	CASE NUMBER:

12. I am filing my claim in the following manner *(check the box that shows how you are filing your claim. Note that you must deliver to the court a copy of the claim form or a levying officer's receipt):*
    a. ☐ I presented this claim form to the sheriff, marshal, or other levying officer, AND within two court days I shall deliver to the court the following: (1) a copy of this completed claim form or a receipt, (2) the court filing fee or form for proceeding in forma pauperis, and (3) an amount equal to 15 days' rent; or
    b. ☐ I presented this claim form to the sheriff, marshal, or other levying officer, AND within two court days I shall deliver to the court (1) a copy of this completed claim form or a receipt, and (2) the court filing fee or form for proceeding in forma pauperis.

IMPORTANT: Do not take a copy of this claim form to the court unless you have first given the form to the sheriff, marshal, or other levying officer.

(To be completed by the court)

Date of hearing: Time: Dept. or Div.: Room:
Address of court:

NOTICE: If you fail to appear at this hearing you will be evicted without further hearing.

13. **Rental agreement.** I have *(check all that apply to you)*:
    a. ☐ an oral rental agreement with the landlord.
    b. ☐ a written rental agreement with the landlord.
    c. ☐ an oral rental agreement with a person other than the landlord.
    d. ☐ a written rental agreement with a person other than the landlord.
    e. ☐ a rental agreement with the former owner who lost the property through foreclosure.
    f. ☐ other *(explain):*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

WARNING: Perjury is a felony punishable by imprisonment in the state prison.

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF CLAIMANT)

NOTICE: If your claim to possession is found to be valid, the unlawful detainer action against you will be determined at trial. At trial, you may be found liable for rent, costs, and, in some cases, treble damages.

— NOTICE TO OCCUPANTS —

YOU MUST ACT AT ONCE if all the following are true:

1. **You are NOT named, in the accompanying form called Writ of Possession;**
2. **You occupied the premises on or before the date the unlawful detainer (eviction) action was filed***; and*
3. **You still occupy the premises.**
4. **A Prejudgment Claim of Right to Possession form was NOT served with the Summons and Complaint, OR you are being evicted due to foreclosure.**

You can complete and SUBMIT THIS CLAIM FORM

(1) Before the date of eviction at the sheriff's or marshal's office located at *(address)*:

(2) OR at the premises at the time of the eviction. *(Give this form to the officer who comes to evict you.)*

If you do not complete and submit this form (and pay a filing fee or file the form for proceeding in forma pauperis if you cannot pay the fee), YOU WILL BE EVICTED along with the parties named in the writ.

After this form is properly filed, A HEARING WILL BE HELD to decide your claim. If you do not appear at the hearing, you will be evicted without a further hearing.

FORM

You'll find a copy of the Claim of Right to Possession and Notice of Hearing in Appendix C, and the Nolo website includes a downloadable copy of this form. (See Appendix B for the link to the forms in this book.)

The sheriff should have filled in the case number on the front of the form.

Here's how to make a claim:

Step 1: Fill out the Claim of Right to Possession and Notice of Hearing form.

Step 2: Give the form to the sheriff or marshal. Submitting the Claim form will stop the eviction. You can give the sheriff the form any time until and including when the sheriff comes back to evict you. You do not have to take it to the sheriff's office, although you may; you can just hand it to the sheriff.

Step 3: Send the court the filing fee (or a form requesting waiver of the fee) within two court days, as explained on the Claim of Right to Possession and Notice of Hearing form. If you submit 15 days' rent with your filing fee, the hearing will be held within five to 15 days. If you don't submit 15 days' rent with your filing fee, the hearing will be held in five days. (See sample letter to court, below.)

When the court holds its hearing, it will determine the validity of your claim. If the court rules in your favor, the Complaint will be deemed to have been served on you at the hearing, and you will be able to respond to it in any of the ways discussed above. If the court rules against you, it will order the sheriff to proceed with the eviction.

RESOURCE

Landlords' eviction resource. If you want a clear understanding of evictions from the landlord's point of view, including all the forms and procedures landlords must follow to evict (from preparing the Complaint and Summons to collecting a money judgment), see *The California Landlord's Law Book: Evictions*, by David Brown (Nolo).

Sample Letter to Court Regarding Claim of Right to Possession

(Date)

Superior Court of California
County of _____,
_____ Judicial Diivision/Branch

Re: Unlawful Detainer Action, Case No. _____

Enclosed is a check for $_____ as payment of the fee for filing a Claim of Right to Possession. I filed a Claim of Right to Possession to the premises at _____ on _____, 20___, by giving the Claim to the sheriff/marshal of _____ County.

I have also enclosed a check for $_____, an amount equal to 15 days' rent of the premises.

Sincerely,
Tom Tenant
Tom Tenant

CHAPTER 16

Renters' Insurance

Renters' insurance policies are designed to protect tenants from losses caused by fire, criminal activity, and for a little extra, flood and earthquake. Buying renters' insurance is a good idea, because you have a lot to lose if there's an event like the ones mentioned above. For instance, a serious fire can be devastating—you lose your home, your belongings, and your life is disrupted. Insurance will pay, up to a certain amount ("policy limits") the replacement cost of your belongings, cost of a hotel and, depending on the policy, other out-of-pocket losses.

Renters' insurance can also provide protection against claims made against the tenant. For example, let's say you or someone in your household leaves the house, but has inadvertently left a pot of rice cooking. A fire ensues and causes damage to your landlord's property or another tenant's property. You would be liable, but insurance should help pay the cost.

Renters' insurance policies are surprisingly inexpensive, $150 to $300 per year depending on where you live, how much insurance coverage you want, and the types of coverage you've purchased.

Renters' insurance is a package of several types of insurance designed to cover tenants for more than one risk. Each insurance company's package will be slightly different—types of coverage offered, the dollar amounts specified for coverage, and the deductible will vary. There is nothing we can tell you here that will substitute for your shopping around and comparing policies and prices. It's a good idea to talk to friends and see if they are happy with their insurance.

The average renters' policy covers you against losses to your belongings occurring as a result of fire and theft, up to the amount stated on the face of the policy, which is often $15,000 or $25,000. As thefts have become more common, most policies have included deductible amounts of $500, or even $1,000. This means that if your apartment is burglarized, you collect from the insurance company only for the amount of your loss over and above the deductible amount.

Compensation for lost property will differ, depending on whether the policy will pay for the "replacement cost" of the item (that is, the current cost of replacing the item you lost), or the "fair market value" or "actual cash value" of the item (that is, what the item cost minus depreciation). If you can get it, it is better to get replacement cost—although the insurance may cost you a little more.

Many renters' policies completely exclude certain property from theft coverage, including cash, credit cards, and pets. Others limit the amount of cash covered to $100, jewelry and furs to $500. The value of home computers and equipment may be included as part of the contents coverage amount, or they may be separately scheduled on the policy. If you live in a flood- or earthquake-prone area, you'll have to pay extra for coverage. Earthquake policies, for example, typically run from $2 to $4 for each $1,000 of coverage, with a deductible of 10% to 15% of total coverage. Make sure your policy covers what you think it does. If it doesn't, check out the policies of other companies. As a general rule, you can get whatever coverage you want if you are willing to pay for it.

If you do take out insurance on valuable items, you should inventory them: Note down their values and take photos or make videotapes. Include the estimated value of each item, backed up with information on the model number and date of purchase. Keep the inventory and photos at work or some

place other than your apartment, so that if there is a disaster, your inventory won't suffer the same fate as your belongings.

In addition to fire and theft coverage, most renters' policies give you (and your family living with you) personal liability coverage to an amount stated in the policy ($100,000 is typical). This means that if you injure someone (for example, you accidentally hit a guest on the head with a golf ball), a guest is injured through your negligence on the rental property that you occupy (for example, he slips on a broken front step), or you damage his belongings (for example, your garden hose floods the neighbor's cactus garden), you are covered. There are a lot of exclusions to personal liability coverage. Any damage you do with a motor vehicle, with a boat, or through your business won't be covered.

CAUTION

Your landlord's homeowners' insurance won't cover you. Even if you live in a duplex with your landlord and the landlord has a homeowners' policy, this policy won't protect your belongings if there is a fire or theft. Of course, if you suffer a loss as a result of your landlord's negligence, you may have a valid claim against her. Most landlords have insurance specifically to protect against this sort of risk.

If you have a loss, be sure your insurance company treats you fairly. If the company won't pay you a fair amount, consider taking the dispute to small claims court if it is for $10,000 or less. If the loss is a major one, you might consider seeing a lawyer, but agree to pay the lawyer only a percentage of what he or she can recover over and above what the insurance company offers you without the lawyer's help.

Many landlords insert a clause into their leases or rental agreements requiring that the tenant purchase renters' insurance. This is legal under California law and your failure to obtain insurance could lead to eviction. The landlord's motive for doing so is threefold:

- If the tenant's property is damaged in any way that is not the landlord's legal responsibility and the damage is covered by the renters' policy, the landlord won't have to rely on his or her own insurance policy.
- Anyone who suffers a personal injury on the property in a situation where the tenant is at fault is less likely to also sue the landlord.
- A number of landlords believe that tenants who are willing to buy insurance are more responsible than other tenants.

Finding Earthquake Insurance Can Be Difficult

The occurrence and risk of earthquakes in California has made it increasingly difficult for tenants to obtain renters' insurance. Insurance Code Section 10083 requires insurance companies to offer earthquake coverage with every homeowners' policy (renters' insurance is considered a form of homeowners' insurance), but most large companies are limiting the number of policies and type of coverage they issue as a result of the 1994 Northridge earthquake, which cost the insurance industry billions of dollars. Smaller companies are, however, continuing to offer policies, sometimes only for specified, earthquake-safe buildings. Independent brokers are usually the best sources for available and affordable policies.

RESOURCE

More information on renters' insurance. Check out the Insurance Information Institute website at www.iii.org, which includes useful articles including a renters' insurance checklist and advice on doing a home inventory. Also, see www.rentersinsurance.net to get quotes from major insurers.

CHAPTER

17

Condominium Conversion

Converting buildings from rental properties into condominiums was unusual several years ago. Now, however, high demand for housing—specially in urban areas—and greater profitability for landlords and developers have led to a condominium boom. Because the conversion of a condominium from rental to ownership often displaces tenants, many cities have enacted condominium conversion ordinances that, in addition to state law, create protections for both the tenant and the prospective condominium owner.

Condominium ownership as an abstract idea can make great sense. People have a basic need to own their own spaces, and with the high cost of land and construction, condominiums are often the only way this need can find expression. But many tenants of existing rental properties are unable or unwilling to pay large sums of money to purchase their units.

Here is a little story about what this could mean to you.

One day the mail carrier delivers an identical letter to all the tenants in a multiunit building. The owner, it seems, has decided to convert the building from rental units to owner-occupied condominiums. Everyone will either have to buy their apartments and a share of the common space (such as halls and grounds) or move out. Those with leases must leave when they run out, and those with month-to-month tenancies under a written rental agreement must leave in 30 or 60 days. The letter concludes politely that the owners hope that they have caused no inconvenience and are sure that many tenants will welcome this opportunity to buy their units at the rock bottom price of $400,000 each.

Is there anything tenants can do if they want neither to move nor to buy their units? Yes.

Legal Protection for Tenants

Converting rental units to a condominium constitutes a "subdivision" under California law. This means that the project must comply with the statewide Subdivision Map Act, and that the landowner must apply for and receive approval of a "plan," or project, from the county agency in charge of reviewing the applications. (GC § 66427.1.) In addition, many cities, including Berkeley, Los Angeles, Oakland, San Diego, San Francisco, San Jose, Santa Monica, and West Hollywood, have enacted their own ordinances, which impose additional requirements. If you live in a city that has additional protections, it is worth your while to learn more about your legal rights when your building is being converted. Contact your local rent control board or city government for further information. (You can find contact information for rent control cities in Appendix A.)

Statewide Application and Notice Requirements

A landowner who wishes to convert rental property to condominiums, or who intends to demolish existing rental property and replace it with new condos, must follow the procedures outlined in the Subdivision Map Act (if a local ordinance applies, the procedures outlined there must be followed, too). The state law specifies that the landowner must:

- apply for tentative tract map approval with the county or, if there is a local ordinance, with the city.
- participate in the public hearing held by the planning agency, which will recommend approval or disapproval of the project. The agency can also attach conditions to its approval. The landowner may appeal the decision to the agency's governing body (the board of supervisors or the city council, if there is a local ordinance involved).
- receive a public report from the State Department of Real Estate, which is granted only when the landowner has complied with all the conditions of the tentative tract map issued by the planning agency. At this point, the application process ends.

According to state law, tenants who will be evicted because of a planned condo conversion must be given notice of all the steps outlined above. These notice periods are as follows:

- Sixty days before the filing of a tentative tract map application, you must be told of the owner's intent to convert. (GC §§ 66427.1(a), 7060.4(b).) Tenants who are 62 years of age or older, or who are disabled, and who have lived in the unit for at least one year are entitled to one year's notice.
- Ten days before the application for a public report, you must be told of the owner's intention to ask the Department of Real Estate to issue the final report. (GC § 66427.1(a).)
- Ten days before the county or city approves the final map, you must be told of its readiness. (GC § 66427.1(b).)
- One hundred and eighty days before eviction, you must be given notice of the owner's intent to convert to condominiums. (GC § 66427.1(c).)
- Ten days before *any* hearing regarding the proposed conversion, you must be informed of the hearing, where you have the right to appear and speak. (GC §§ 66451.3, 65090, and 65091.)

Local ordinances may impose stricter notice requirements.

The Tenants' Right to Purchase

Once the subdivision tract map has received final approval by way of the State Department of Real Estate's public report, you must be given the chance to purchase your apartment before anyone else. The selling price and terms must be as good as or better than those that will be offered to the public at large, and you have 90 days following the issuance of the final report in which to exercise your option. (GC § 66427.1(d).)

Renting After Conversion Has Been Approved

Landlords who have received condo conversion approval will typically continue to rent the units in the building during the time that it takes to sell all the units. Tenants who have been residents since before the approval are, of course, aware of the tenuousness of their position and should have the benefit of the 90 days "right of first refusal" when their unit is put up for sale (see the discussion above). But what about the tenant who begins a tenancy *after* the final conversion approval?

State law insists that a landowner explicitly explain the situation to a new renter. (GC § 66459(a).) If you enter into a lease or rental agreement *after* the final approval of a subdivision map for that property, and if the project consists of five or more units, your landlord must include a clause in the lease that reads (in bold, 14-point type) as follows:

> **THE UNIT YOU MAY RENT HAS BEEN APPROVED FOR SALE TO THE PUBLIC AS A CONDOMINIUM PROJECT, COMMUNITY APARTMENT PROJECT OR STOCK COOPERATIVE PROJECT (WHICHEVER APPLIES). THE RENTAL UNIT MAY BE SOLD TO THE PUBLIC AND, IF IT IS OFFERED FOR SALE, YOUR LEASE MAY BE TERMINATED. YOU WILL BE NOTIFIED AT LEAST 90 DAYS PRIOR TO ANY OFFERING TO SELL. IF YOU STILL LAWFULLY RESIDE IN THE UNIT, YOU WILL BE GIVEN A RIGHT OF FIRST REFUSAL TO PURCHASE THE UNIT.**

As a further precaution, the landlord is not even allowed to refer to his property as an "apartment" in a lease or rental agreement once the final approval for his conversion project has come through. (GC § 66459(b).) Unfortunately, however, these notice provisions lack any real "teeth," since the landlord's failure to comply will not invalidate a sale. (GC § 66459(e).)

Conversions That Don't Comply With Proper Notice to the Tenants

A landowner's failure to abide by the notice requirements imposed by state law will not necessarily defeat his bid to have his conversion project approved by the county agency reviewing the project. State law provides that a tentative or final map may not be disapproved solely because the tenants were not given the full amount of notice. There must be other reasons for disapproval besides the lack of notice to the tenants. (GC § 66451.4.)

Your Right to Assistance After Conversion

Although state law does not require the landlord to assist tenants in the selection and cost of replacement housing, many local ordinances do. These ordinances typically provide for assistance to elderly, disabled, or low-income tenants, and to families with minor children. Some ordinances direct the landlord to offer lifetime leases to elderly tenants. Often, moving costs must be covered by the landlord. If you live in Los Angeles, San Francisco, Oakland, San Diego, San Jose, or Santa Monica and you are evicted due to the sale of your apartment, check your local code to find out whether you qualify for assistance.

Changing the Law

Tenants can also band together to get the local government to pass an ordinance allowing condominium conversions only if a number of conditions have been met. A good condominium conversion ordinance should require most, if not all, of the following conditions, before a conversion can take place:

- Fifty percent of the current tenants approve of the conversion.
- All tenants over 65 or disabled are allowed to continue as tenants for life if they wish.
- No conversions are allowed where the landlord has evicted large groups of tenants or greatly raised rents to get rid of tenants just before the conversion.
- No conversions of any kind are allowed when the rental vacancy rate in a city is below 5%, unless new rental units are being built at least fast enough to replace those converted.
- Special scrutiny is given to conversion of units rented to people with low and moderate incomes, to see that the units are priced at a level that the existing tenants can afford.
- The landlord provides adequate relocation assistance.

To stop a proposed condominium conversion, it is essential that tenants act together and that they create political alliances with sympathetic groups in the city. You will want to start by checking out your landlord carefully. Look for facts about the landlord that would tend to make local government agencies unsympathetic to the conversion. Among the best are the following:

- The landlord is from out of town and has recently bought your building (and perhaps others) as a speculation.
- The landlord has a long history of violating housing codes and generally is known as a bad landlord.
- The landlord raised rents excessively, terminated tenancies for no reason, and did other things to clear out the building before the conversion was announced.
- The building is occupied by many older people (or others on fixed incomes) who have no place to go, and the landlord has made little or no effort to either allow them to stay on at terms they can afford or find them a decent place to live.
- The landlord is making an excellent return on his money as rental units, and conversion to condominiums would result in huge profits.

CHAPTER 18

Lawyers, Legal Research, and Mediation

Most of the time, you'll be able to learn of your rights, and hopefully communicate them to your landlord and enforce them, without the need to look at the law itself or consult an attorney. But sometimes you'll need to do one or both—for example, you may want to make sure that the steps you're taking to withhold rent are the current, legally required steps; and you may want to consult with an attorney before taking on your landlord by yourself in an eviction lawsuit. This chapter gives you some suggestions on how to find and understand the law (statutes and cases), and how to find a good lawyer. If gentle persuasion fails and you appear headed for a formal conflict with your lawyer, almost always you'll want to first try mediation, an efficient, low-cost alternative to court. This chapter gives you the information you need on that score, too.

RESOURCE

Advice on small claims court. If your legal issue involves a small claims court dispute over security deposits, see Chapter 13; if it involves drug houses in your neighborhood, check out the discussion in Chapter 11 on small claims court lawsuits involving groups of tenants and neighbors.

Lawyers

This book is not designed to replace an attorney. It is meant to give you a clear understanding of your rights and obligations, and help you decide whether you need a lawyer.

Lawyers, like most of the rest of us, are in business to make money. Most charge from $200 to $300 an hour. Clearly, when you have a dispute with your landlord that involves a few hundred dollars, it does not make good sense to pay someone as much (or more) than that to try to vindicate your position. In addition, if your lease has an "attorney fees" clause, there is the danger that you will lose and end up paying both your landlord and your attorney, too.

When Do You Need a Lawyer?

There is no simple answer to the question of when you need a lawyer. This is because there are many possible areas of dispute between landlord and tenant, and many levels of tenant ability to deal with problems. Throughout this book, we suggest times when the advice or other services of an attorney would be useful, but here are a few general pointers:

- If you believe that you have been discriminated against in a significant way, especially if there are others who have suffered a similar experience, consider seeing an attorney (but read about discrimination in Chapter 4 first).
- Attorneys will sometimes take cases like these on a "contingency fee" basis. That is, rather than charge you out-of-pocket, the attorney will take a percentage of the winnings. Under these arrangements, you do not have to pay the attorney if you lose the case.
- If you believe you've been abused in other ways, such as an illegal eviction, severe habitability problems, being injured on the premises, harassment, or invasion of privacy, you might want to consult with an attorney. Again, attorneys might consider a contingency fee arrangement as explained above.
- If your landlord sues you for a lot of money, or if you suffer a significant physical or emotional injury because of action or inaction by the landlord or manager, see an attorney.
- If you have any problem that you can't understand or solve by reading this book, you should do some legal research yourself or get some professional advice.
- If you're being evicted and have concluded that you may have trouble conducting your defense, consider at least consulting with an attorney.

What Lawyers Can Do for You

There are three basic ways a lawyer can help with the problems a tenant commonly faces.

Consultation and Advice

The lawyer can listen to the details of your situation, analyze it for you, and advise you on your position and best plan of action. Ideally, the lawyer will give you more than just conclusions—an attorney can educate you about your whole situation and tell you all the various alternatives available. Then you can make your own choices. Or, you may just want a lawyer to look over the papers you have prepared, to be sure they are correct. This kind of service is the least expensive, as it involves only an office call and a little time. Find out the fee before you go in.

Negotiation

The lawyer has special talents, knowledge, and experience that will help you negotiate with the landlord. In case of serious problems, a lawyer can probably do this more successfully than you, especially if you are at odds with the landlord, or if your landlord has an attorney. Without spending much time, the attorney can often accomplish a lot through a letter or phone call. Receiving a message on an attorney's letterhead is, in itself, often very sobering to a landlord. Also, if bad turns to worse, a lawyer can convincingly threaten legal action. You can then decide at a later time whether to actually pursue it.

Lawsuits

In some instances, your case may merit going into court with a lawsuit. Having your lawyer go into court can be expensive and is only rarely warranted. However, in cases where the lawyer believes a recovery is possible, a case can be taken on a contingency fee basis, as discussed above. If the landlord sues you first, it is more likely that you will end up in court, and very likely that you will need a lawyer's help.

Finding a Lawyer

Finding a lawyer who charges reasonable prices and whom you feel can be trusted is not always an easy task. There is always the danger that by just picking a name out of the telephone book you may get someone unsympathetic (perhaps an attorney who specializes in representing landlords) or an attorney who will charge too much. Here are some suggestions.

Legal Aid

If you are very poor, you may qualify for free help from your Legal Aid (often called Legal Services) office. Check your phone directory or search online for their location, or ask your Superior Court Clerk. Legal Aid personnel may not be able to represent tenants in court, but may offer self-help materials.

Tenants' Rights Organizations

In a number of California communities, tenants have gotten together and established tenants advocacy organizations. Many of these groups provide free or low-cost tenant counseling, provided by paralegals, and sometimes by volunteer lawyers. Counseling involves helping tenants understand their rights and sometimes extends to helping them prepare paperwork necessary to file or defend a lawsuit. Local bar associations also sometimes provide clinics for low-income tenants.

"Tenants Together" is a nonprofit, statewide tenants' rights organization (www.tenantstogether.org) that educates, organizes, and advocates on behalf of tenants in California. Tenants Together works on a day-to-day basis with other housing organizations and tenant attorneys, and promotes pro-tenant efforts on a state and local level. Their website provides a wide array of useful information.

Personal Referrals

If you're looking for a lawyer on your own, this is the best approach. If you know someone who has consulted a lawyer on a landlord-tenant matter and was pleased with the lawyer, call that lawyer first.

Prepaid Legal Plans

Many unions, employers, private companies, and consumer groups now offer membership in prepaid legal plans.

The services provided by the plans vary widely. Some give legal services at reduced fees; some offer free advice. If a plan offers extensive free advice, your initial membership fee may be worth the consultation you receive, even if you use it only once. Most plans have renewal fees; it's common to join a plan for a specific service and then not renew.

There's no guarantee that the lawyers available through these plans are any good. Check out the plan, and if possible its lawyers, in advance. And when using any of these prepaid plans, remember this: The lawyer is typically paid very little by the prepaid plan for dealing with you. Some lawyers sign up in the hope they can talk you into buying extra services not covered by your monthly premium. The best plans are those that do not permit the consulting lawyers to "self-refer." This means that the person you're talking to cannot attempt to persuade you to become his or her client.

Private Law Clinics

To market their services, some law firms advertise on TV, over the Internet, and on radio, offering low initial consultation fees. This generally means that a basic consultation is cheap (often less than $100), but anything after that isn't. If you consult a law clinic, the trick is to quickly extract what information you need and to resist any attempt to make you think you need further services.

Lawyer Referral Panels

Most county bar associations maintain lawyer referral services. Usually, you can get a referral to an attorney who specializes in landlord-tenant law, and an initial consultation for free or for a low fee. But some of the panels don't really screen the listed attorneys, and some of the attorneys participating may not have much experience or ability. If you contact an attorney this way, be sure to ask about experience with tenant problems, and make sure the lawyer is sympathetic to tenants' rights.

Yellow Pages or the Internet

The Yellow Pages has an extensive listing of attorneys and sublistings by specialty. Look for "Tenant Rights," "Landlord Tenant" and "Real Estate" areas of practice. If you have Internet access, even better. Try "Tenant Rights attorneys in [your city]." Beware, though, in both the Yellow Pages and online, advertising is paid for and prominent advertising does not necessarily mean that an attorney is the best in that area.

Shop around by calling different law offices and stating your problem. Ask to talk to a lawyer personally; if the law firm won't allow it, this should give you an idea of how accessible the lawyer is. Ask some specific questions. Do you get clear, concise answers? If not, try someone else. If the lawyer says little except to suggest that he handle the problem (with a substantial fee, of course), watch out. You are talking with someone who either doesn't know the answer and won't admit it (common), or someone who pulls rank on the basis of professional standing. Don't be a passive client or deal with a lawyer who wants you to be one.

Keep in mind that lawyers learn mostly from experience and special training, not from law school. Because you're already well informed (you've read this book), you should be in a good position to evaluate a lawyer's preparedness to handle your problem.

Remember, lawyers whose offices and lifestyles are reasonably simple are more likely to help you for less money than lawyers who feel naked unless wearing a $2,000 suit. You should be able to find an attorney willing to represent you for either a flat rate or an hourly rate of between $200 and $300, depending on where the lawyer's office is located (big city lawyers tend to be pricier) and how complex your case is.

Nolo's Lawyer Directory

You may also want to consider Nolo's Lawyer Directory (www.nolo.com/lawyers). Lawyers are listed by category (you'll want the Real Estate group; if your legal dispute involves a personal injury or foreclosure issue, check out attorneys in those categories).

To help consumers choose the right attorney, Nolo's Lawyer Directory allows each advertiser to provide a detailed profile, with information about each lawyer's expertise, education, and fees. (Nolo does not confirm this information.) Lawyers also indicate whether they are willing to review documents or coach clients who are doing their own legal work. You can also submit information about your legal issue to several local attorneys who handle landlord-tenant issues, and then pick the lawyer you'd like to work with. Before you choose any attorney, be sure to ask for a list of references (clients with similar legal problems) whom you can call.

RESOURCE

For advice on hiring and working with lawyers, including what to ask a prospective attorney, see www.nolo.com/lawyers/tips.html.

Typing Services and Unlawful Detainer Assistants

What if you don't want to hire a lawyer but don't want to do all your legal paperwork yourself? There's a middle ground. A number of businesses, known as "legal typing services," "legal document preparers," "unlawful detainer assistants," or "independent paralegals," assist people doing their own legal work in filling out the forms. Most typing services concentrate on family law or bankruptcy, but some handle landlord-tenant matters, too.

These services aren't lawyers. They can't give legal advice and can't represent you in court—only lawyers can. You must decide what steps to take in your case, and the information to put in any needed forms. Such services can, however:

- provide written instructions and legal information you need to handle your own case
- provide the appropriate forms, and
- prepare your papers so they'll be accepted by the court.

Unlawful detainer assistants and similar services commonly charge far less than attorneys, because their customers do much of the work and make the basic decisions. Also, these services handle only routine cases.

If you're looking for this type of service, go online and search for "legal document preparation [your county]." For example, a search for "legal document preparation San Francisco" resulted in four hits, and more outside the county. Or, check classified sections of newspapers under Referral Services, usually immediately following Attorneys. Also check the Internet or yellow pages under "Eviction Services" or "Paralegals." A local Legal Aid office may provide a reference, as will the occasional court clerk. Many offices have display ads in local throwaway papers like the *Classified Flea Market*.

Occasionally, these types of services have taken money from a customer and then failed to deliver the services as promised. As with any other business rip-off, you, as a consumer, can sue in small claims or regular court, and report the matter to your local district attorney's consumer fraud division. But legal remedies are often ineffective. The best precaution is to select a reliable document preparation service at the beginning. As with finding a lawyer, a recommendation from a satisfied customer is best. Also, as a general matter, the longer such a service has been in business, the better.

Paralegals who handle eviction matters, whether for the tenant or landlord, must be registered and bonded as an "unlawful detainer assistant." (B&P §§ 6400-6415.) If the service isn't registered, don't use it. The court forms that an eviction service prepares, such as the Answer (discussed in Chapter 15), require you to state under penalty of perjury whether an "unlawful detainer assistant" helped you. If you hired an unlawful detainer assistant, you must give the eviction service's name, address, and registration number on the form.

Legal Research

We don't have space here to show you how to do your own legal research in anything approaching a comprehensive fashion. *Legal Research: How to Find & Understand the Law,* by Stephen Elias and the Editors of Nolo (Nolo), is an excellent resource if you wish to learn basic legal research skills, something we highly recommend. For free information on the subject, see the Laws and Legal Research section of www.nolo.com.

Our goal in this section is only to tell you how to find the basic laws that control your residential tenancy. In addition, we show you how to locate the important judicial decisions (most of which are mentioned in this book) that interpret these laws.

TIP

Keep up-to-date on landlord-tenant law so that you know your rights and can avoid legal problems. Check this book's companion page on the Nolo website at www.nolo.com. (Appendix B includes a link to this companion page.)

State Laws

Landlord-tenant laws and legal procedure are principally contained in two parts of California law—the Civil Code (CC) and the Code of Civil Procedure (CCP), both of which are available online at all law libraries and most public libraries. The Civil Code is divided into numerous sections, dealing generally with people's legal rights and responsibilities to each other. Most of California's substantive residential landlord-tenant law is contained in Sections 1940 through 1991 of this code, with laws governing minimum building standards, payment of rent, change and termination of tenancy, privacy, and security deposits, to name a few. The Code of Civil Procedure is a set of laws that tells how people enforce legal rights in civil lawsuits. Eviction lawsuit procedures are contained in Sections 1161 through 1179 of the Code of Civil Procedure. Also of interest are the small claims court procedures mentioned in Sections 116.110 through 116.950.

RESOURCE

Where to read state statutes themselves (and check pending legislation). See the website maintained by the Legislative Council at www.leginfo.ca.gov. For advice on finding a law, statute, code section, or case, see the Laws and Legal Research section on the Nolo site, www.nolo.com/legal-research. You may also find it useful to go to the reference desk at your public library for help; many have good law collections. If your county maintains a law library that's open to the public (often in a courthouse, state-funded law school, or a state capital building), you can get help there, too, from law librarians.

In this book, we make frequent references to statutes found in sources like the California Code of Civil Procedure and California Civil Code. We use standard abbreviations like CCP and CC to make future references to these sources easier. For your convenience, there is a list of standard abbreviations used in this book located on the last page of the "Your Legal Companion," at the beginning of this book.

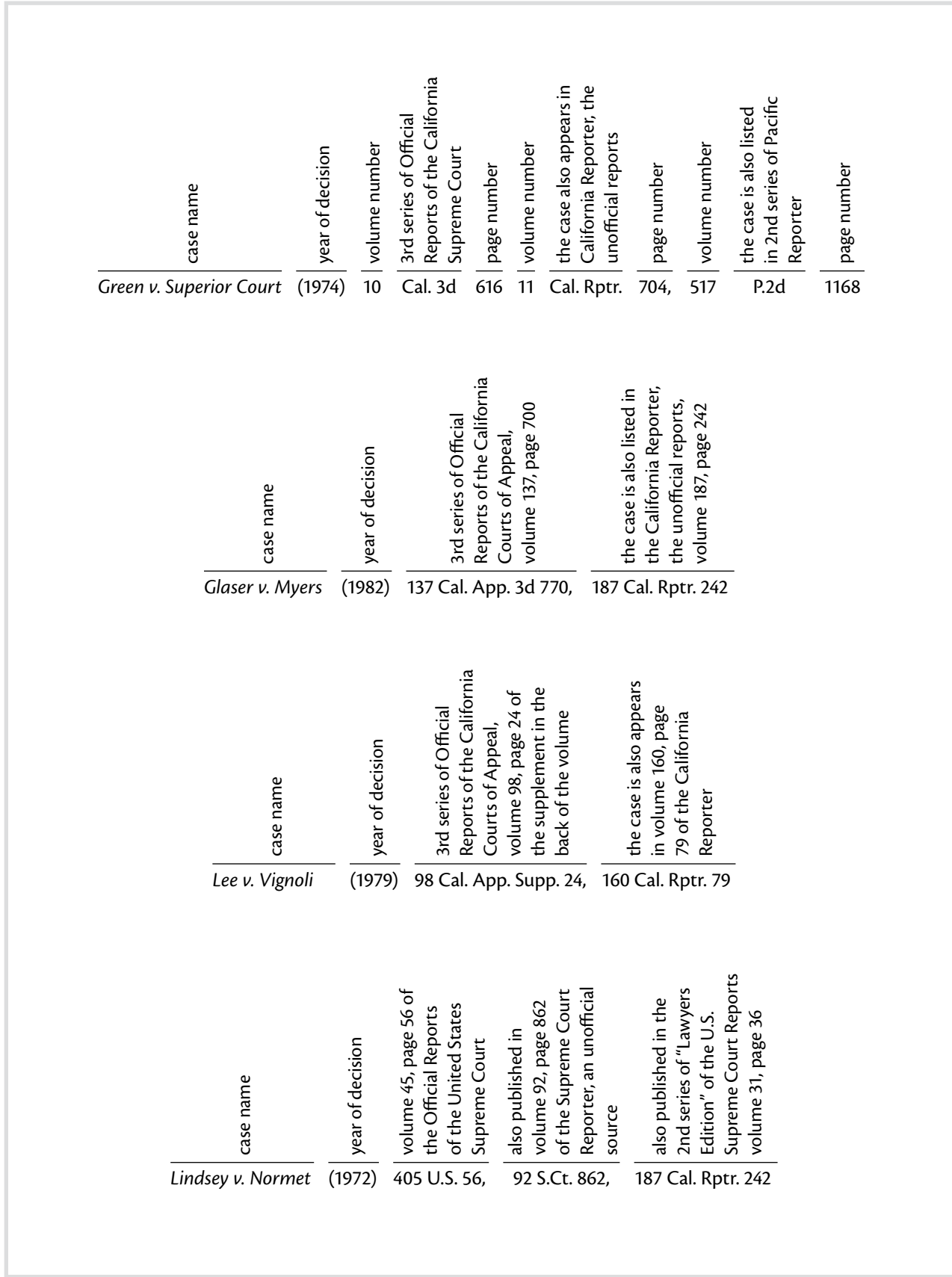
If you want to check out regulations that give specificity to laws that the legislature has passed (and the governor has signed), check out the Code of Regulations at http://ccr.oal.ca.gov. Title 25, Housing and Community Development, for example, covers rules that apply to housing, such as rules regarding hot water in rental.

Local Ordinances

If your rental unit is covered by rent control, and/or just cause for eviction protection, be sure to check out local rent control rules (see Appendix A and the chart in Chapter 3).

Even if your rental unit is not covered by rent control, you should be aware of any local ordinances that may affect you, such as your

Examples of Case Citations



case name	year of decision	volume number	3rd series of Official Reports of the California Supreme Court	page number	volume number	the case also appears in California Reporter, the unofficial reports	page number	volume number	the case is also listed in 2nd series of Pacific Reporter	page number
Green v. Superior Court	(1974)	10	Cal. 3d	616	11	Cal. Rptr.	704,	517	P.2d	1168

case name	year of decision	3rd series of Official Reports of the California Courts of Appeal, volume 137, page 700	the case is also listed in the California Reporter, the unofficial reports, volume 187, page 242
Glaser v. Myers	(1982)	137 Cal. App. 3d 770,	187 Cal. Rptr. 242

case name	year of decision	3rd series of Official Reports of the California Courts of Appeal, volume 98, page 24 of the supplement in the back of the volume	the case is also appears in volume 160, page 79 of the California Reporter
Lee v. Vignoli	(1979)	98 Cal. App. Supp. 24,	160 Cal. Rptr. 79

case name	year of decision	volume 45, page 56 of the Official Reports of the United States Supreme Court	also published in volume 92, page 862 of the Supreme Court Reporter, an unofficial source	also published in the 2nd series of "Lawyers Edition" of the U.S. Supreme Court Reports volume 31, page 36
Lindsey v. Normet	(1972)	405 U.S. 56,	92 S.Ct. 862,	187 Cal. Rptr. 242

city's health and safety standards. You'll find local ordinances online at the site maintained by the Institute of Governmental Studies in Berkeley, at www.igs.berkeley.edu/node/11317.

Federal Statutes and Regulations

Congress has passed laws, and federal agencies such as the U.S. Department of Housing and Urban Development (HUD) have adopted regulations that amplify those laws, covering issues such as discrimination. We refer to relevant federal agencies throughout this book and suggest you contact them for publications that explain federal laws affecting tenants. If you want to check out a specific federal regulation, a good place to start is the Code of Federal Regulations (C.F.R.) which you can find at the U.S. House of Representatives Internet Law Library at http://uscode.house.gov. (See the Laws and Legal Research section on www.nolo.com for advice on finding and reading federal law.)

Court Decisions

Although codes contain the text of applicable laws passed each year by the legislature, they don't contain the text of any of the appellate court decisions that determine what those laws mean. Sometimes these cases are extremely important. For example, the case of *Green v. Superior Court*, 40 Cal.3d 616 (1974) adopted a "common law" rule allowing tenants in substandard housing to withhold rent—without paying to make repairs themselves. To gain access to the printed reports of important court decisions, you have to go to a law library, either "real" or "virtual."

The best way to learn of the existence of written court decisions that interpret a particular law is to first look in an "annotated code." An annotated code is a set of volumes of a particular code, such as the Civil Code or Code of Civil Procedure mentioned above, that contains not only all the laws (as do the regular codes), but also a brief summary of many of the court decisions interpreting each law. These annotated codes can be found in some public libraries and any county law library or law school library in the state. (Unfortunately, they aren't available for free online.) They have comprehensive indexes by topic, and are kept up to date each year with paperback supplements ("pocket parts") located in a pocket in the back cover of each volume. Don't forget to look through these pocket parts for the latest law changes or case decisions since the hardcover volume was printed.

Each brief summary of a court decision is followed by the title of the case, the year of the decision, and the "citation." The citation is a sort of shorthand identification for the set of books, volume, and page where the case can be found. The "official" volumes of cases are published by the California Supreme Court as the Official Reports of the California Supreme Court (abbreviated "Cal.," "Cal.2d," "Cal.3d," or "Cal.4th," respectively, representing the first, second, third, and fourth "series" of volumes) and by the California Courts of Appeal as Official Reports of the California Courts of Appeal (similarly abbreviated "Cal.App.," "Cal.App.2d," "Cal.App.3d," and "Cal.App.4th"). The same cases are also published in "unofficial volumes" by the West Publishing Company. These are California Reporter (abbreviated "Cal.Rptr." and "Cal. Rptr.2d") and Pacific Reporter (abbreviated "P." or "P.2d," respectively, for the first and second series). The case is the same whether you read it in the official or unofficial reporter.

Above are examples of case citations which should take some of the mystery out of legal research. If, in the course of your research, you still have questions, again we recommend *Legal Research: How to Find & Understand the Law,* by Stephen Elias and The Editors of Nolo (Nolo).

Where to Find Statutes, Ordinances, and Cases

Every California county maintains a law library that is open to the public. All have the California

statutes (including annotated versions), written court opinions, and expert commentary. You can find and read any statute or case we've referred to at the law library by looking it up according to its citation. For most of you, the fastest and most convenient way to read codes is on the Internet, as explained above.

Instead, you may want to start your research with a good background resource. We mention several of these (The *California Eviction Defense Manual*, for example) throughout the book. Another good resource, usually kept behind the desk at the reference counter of most libraries, is a loose-leaf two-volume set published by The Rutter Group entitled *Landlord-Tenant (The Rutter Group California Practice Guide)*.

Mediation

Mediation involves bringing in a neutral third party to help disputants settle differences. The mediator normally has no power to impose a solution if the parties can't agree. Generally, mediation works well in situations where the parties want to settle their disputes in order to work together in the future. In a landlord-tenant context, mediation can be extremely helpful in a number of areas, such as disputes about noise, the necessity for repairs, a tenant's decision to withhold rent because defects have not been repaired, rent increases, privacy, and many more. Many tenants and especially groups of tenants with a list of grievances find that mediating disputes with a landlord is a better approach to problem solving than is withholding rent, filing a lawsuit, and so on.

Mediators do not impose a decision on the parties, but use their skills to facilitate a compromise. Mediation is most effective when procedures are established in advance. Typically, the tenant or landlord with a problem contacts some respected neutral organization, such as a city or county landlord-tenant mediation project (not every area has one, but many do); the American Arbitration Association (www.adr.org); or a neighborhood dispute resolution center, such as San Francisco's Community Board program, and arranges for this group to mediate a landlord-tenant dispute. There are a great number of mediation programs in California, and if you ask your District Attorney's office or county clerk, you should find one.

At the mediation session, each side gets to state their position. Just doing this often cools people off considerably and frequently results in a compromise. If the dispute is not taken care of easily, however, the mediator may suggest several ways to resolve the problem, or may even keep everyone talking long enough to realize that the problem goes deeper than the one being mediated. For example, a landlord who thinks she runs a tight ship may learn that the real problem from the tenant's point of view is that her manager is lazy and slow to make repairs. This, of course, may lead to the further discovery that the manager is angry at several tenants for letting their kids pull up his tulips.

Because mediation lets both sides air their grievances, it often works well to improve the climate of stormy landlord-tenant relationships. And if it doesn't, you haven't lost much, especially if you make sure mediation occurs promptly and you use it only in situations where your landlord has some arguably legitimate position. If mediation fails, you can still fight it out in court.

Small claims court judges often use mediation as a required first step. Parties are required to attend a mediation session and to attempt to settle their differences before the case will be heard in court.

Rent Control Chart

Reading Your Rent Control Ordinance

The following chart summarizes the major features of California's local rent control laws. We recommend that you check the ordinance itself and always make sure that it hasn't changed since this was printed. In case you are (understandably) intimidated at the prospect of deciphering your city's ordinance, here are a few hints about reading and understanding rent control ordinances.

Almost all rent control ordinances begin with a statement of purpose, followed by definitions of terms used in the ordinance. If such terms as "rental unit" and "landlord" aren't defined specifically enough to tell you who and what is covered by the ordinance, another section dealing with applicability of the ordinance usually follows. After that, the ordinance usually sets out the structure and rules of the rent board and will say whether landlords must register their properties with the board. Your ordinance probably then has a section entitled something like "Annual Increases" or "General Rent Ceiling."

Following the rent sections should be a section on "Individual Adjustments" or "Hardship Adjustments." This section tells landlords how to get an increase over and above any general across-the-board increase. Finally, any requirement that landlords show "just cause" for eviction should be found under a section entitled "Just (or Good) Cause for Eviction." It will contain a list of the permissible reasons for eviction, along with any extra requirements for eviction notices, and prohibit evictions for any other reason.

To see if the landlord has complied with your city's rent control ordinance before he or she begins an eviction, check the ordinance for:

- **Registration requirements.** If the landlord is required to register the unit with the rent board but didn't, you may be able to win an eviction lawsuit.
- **Rent increase restrictions.** Read the individual adjustments section to see if the landlord must apply to the rent board for increases over a certain amount. If so, make sure any rent increases were properly applied for and legal.
- **Special notice requirements.** Check both the general and individual rent adjustment sections, as well as any regulations adopted by the rent board, for special notice requirements for rent increase notices.
- **Just cause requirements.** This is crucial; a landlord can evict only for one of the permissible reasons, and must comply with any additional notice requirements. If a landlord wants to evict tenants in order to demolish the building or simply go out of business, the landlord may do so under the Ellis Act (GC §§ 7060–7060.7), even if this reason isn't listed in the ordinance.

Finding Municipal Codes and Rent Control Ordinances Online

If you live in a city that has rent control, you should have a current copy of the city's rent control law. You can usually obtain a paper copy from the administrative agency that oversees the workings of the ordinance. It's quicker, however, to read the material online. Most cities have posted their ordinances, as you will see from the list below. Use the Rent Control Chart, which provides detailed, city-by-city analyses, as a guide to your own reading of the law. Keep in mind that ordinances often change and their meaning evolves as rent boards issue regulations and make decisions.

You can also access many cities' municipal codes at the following sites: www.municode.com/library/ca, and https://igs.berkeley.edu/library/california-local-government-documents/codes-and-charters.

Berkeley
www.ci.berkeley.ca.us

Go to "Residents" pull-down menu and click on "Berkeley Municipal Code." For rent control provisions, see Municipal Code Chapter 13.76 and Article XVII of the City Charter (search for "city charter" on the home page). The Rent Stabilization Board itself is at www.ci.berkeley.ca.us.

Beverly Hills
www.beverlyhills.org

Go to the "City Government" pull-down menu and then click on "Municipal Code." For rent control provisions, see Title 4, Chapters 5 and 6, of the Municipal Code.

Campbell
www.ci.campbell.ca.us

Click "I want to:" then under "View," select "Municipal Code." www.municode.com/library/ca/campbell/ codes/code_of_ordinances. For rent control provisions, see Title 6, Chapter 6.09, of the Municipal Code.

East Palo Alto
www.ci.east-palo-alto.ca.us

Click "Site Map" at the bottom of the page. The Municipal Code is under the City Attorney heading as well as the City Clerk heading. The site map also has links to the Rent Stabilization program: www.ci.east-palo-alto.ca.us/index.aspx?nid=459. (Rent control provisions, see Title 14 §§ 14.04.010–14.04.350.)

Fremont
www.fremont.gov

Go to the "Your Government" pull-down menu and click on "Municipal Code." (For Residential Rent Increase Dispute Resolution provisions, see Title IX, Chapter 9, §§ 9.60.10 to 9.60.120.)

Gardena
www.ci.gardena.ca.us

On the home page, click "Municipal Code" at left. Rent control provisions are in §§ 14.04.010 through 14.04.290.

To find the Rent Mediation Board page, on the home page move your cursor to "Departments," then move to "City Manager" on the pull-down menu. On the side menu that pops out, click "Rent Mediation."

Glendale
http://qcode.us/codes/glendale

Choose Title 9, then click "9.30, Just Cause and Retaliatory Evictions" (Glendale Municipal Codes §§ 9.30.010 through 9.30.100).

Hayward
www.ci.hayward.ca.us

For the Rent Control Ordinance, go to the City Government's pull-down menu, move cursor to "Documents," then click "Hayward Municipal Code." Finally, choose Ordinance 03-01.

Los Angeles
www.lacity.org
To get to the Los Angeles Municipal Code from the official city website, click the "City Government" link, then the City Charter, Rules & Codes box in the center of the menu. Rent control provisions are in Chapter XV.

Los Gatos
www.town.los-gatos.ca.us
Move your cursor to "Government" at left, and then move the cursor to "Town Code," and click that. Rent control provisions are in Chapter 14, Article VIII.

Oakland
www2.oaklandnet.com
Under "City Government" on the left, click "Municipal Code and Charter." Click "Oakland Code of Ordinances." Choose Title 8, Chapter 8.22.

Palm Springs
www.ci.palm-springs.ca.us
The Municipal Code is at http://qcode.us/codes/palmsprings. Rent control provisions are in title 4, Chapters 4.02, 4.04, and 4.08.

Richmond
www.ci.richmond.ca.us
Choose "Municipal Code" on the home page, then choose Article VII (Businesses), Chapter 7.105.

San Diego
www.sandiego.gov
Choose City Hall, then select the Municipal Code link. Select Chapter 9, Article 8, Division 7 (San Diego Municipal Code §§ 98.0701 through 98.0760).

San Francisco
http://sfgov.org
Rent Board: www.sfgov.org/rentboard or www.sfrb.org
This is the best place online to get rent control ordinance provisions and regulations, maintained by the rent board (click "Ordinances and Regulations"). For the entire collection of city codes, go to the city's main website at www.sfgov.org. Click on the "View More" Link under the Most Requested section on the left, then click "Municipal Codes." On the next page, click "San Francisco Municipal Codes." From this page, click "San Francisco Administrative Code," including the Chapter 37 rent control provisions.

San Jose
www.sanjoseca.gov
Click "City Services," then click "Municipal Code" under "San Jose Government" heading.

Santa Monica
www.smgov.net, and www.smgov.net/departments/rentcontrol
This city's rent control laws are in the City Charter, not in the Municipal Code. On the second website above, click "Rent Control Law & Regulations."

Thousand Oaks
www.toaks.org
This city's rent control ordinances (755-NS [7/1980], 956-NS [3/1987], and 1284-NS [5/1997]) were never made a part of the Municipal Code, and thus cannot be found in the online Municipal Code. If you'd like to look at the Municipal Code anyway, go to the official city site above. Then click "Government," then "Municipal Code" from the menu at left.

West Hollywood
www.ci.west-hollywood.ca.us or www.weho.org
To get to the Municipal Code from this city's official site, click "Municipal Code" under "City Hall."

Rent Control Rules by California City

Berkeley

Name of Ordinance
Rent Stabilization and Eviction for Good Cause Ordinance, City Charter Art. XVII, §§ 120–124, Berkeley Municipal Code Ch. 13.76, §§ 13.76.010–13.76.190.

Adoption Date
6/3/80. Last amended 11/05, by initiative.

Exceptions
Units constructed after 6/3/80, owner-occupied single-family residences, and duplexes. (§ 13.76.050.)

Rental units owned (or leased) by nonprofit organizations that (1) receive governmental funding and rent such units to low-income tenants, or (2) provide such units as part of substance abuse treatment.

Administration
Rent Stabilization Board
2125 Milvia Street
Berkeley, CA 94704
510-981-7368
FAX: 510-981-4910
email: rent@ci.berkeley.ca.us
Website: www.ci.berkeley.ca.us. This is the general city site. Go to the pull-down menu under "Residents" and click "Berkeley Municipal Code," then "Municipal Code & Zoning Ord." to get to Municipal Code. The rent board is at www.ci.berkeley.ca/us/rent. The rent board's site, at the "Laws and Regulations" icon, is the best way to get to rent control and eviction rules.

Registration
Required, or landlords cannot raise rent. (The provision that a tenant can withhold rents if the landlord fails to register was ruled unconstitutional in *Floystrup v. Berkeley Rent Stablization Board*, 219 Cal.App.3d 1309 (1990). Stiff penalties are imposed for noncooperation. (§ 13.76.080.)

Vacancy Decontrol
State law (CC § 1954.53) supersedes the ordinance. Upon voluntary vacancy or eviction for nonpayment of rent, rents may be increased to any level following such vacancies. Once property is rerented, it is subject to rent control based on the higher rent.

Just Cause
Required. (§ 13.76.130.) This requirement applies even if the property is exempt from other rent control requirements because it qualifies as new construction or government-owned/operated housing. Specific good cause to evict must be stated in both the notice and in any unlawful detainer complaint.

Other Features
The landlord's unlawful detainer complaint must allege compliance with both the implied warranty of habitability and the rent control ordinance, except for evictions for remodeling or demolition. If the remodeling, demolition, or moving in of the landlord or a relative on which the eviction was based doesn't occur within two months of the tenant's leaving, the tenant can sue the landlord to regain possession of property and recover actual damages ($750 or three times the actual damages sustained, whichever is greater, where the landlord's reason for the delay was willfully false). (§ 13.76.150.) Also, government-subsidized "Section 8" landlords must register their units and are subject to the yearly annual general adjustment if they raise rents above that set by the Housing Authority.

Reasons Allowed for Just Cause Evictions	Additional Local Notice Requirements and Limitations
Nonpayment of rent.	Ordinary Three-Day Notice to Pay Rent or Quit is used.
Breach of lease provision.	Three-Day Notice to Perform Covenant or Quit is used. Provision must be "reasonable and legal and … been accepted by the tenant or made part of the rental agreement." If the provision was added after tenant moved in, landlord can evict for breach only if tenant was told in writing that she did not have to accept the new term. Tenant must be given "written notice to cease," which precludes an unconditional Three-Day Notice to Quit even if the breach is considered uncorrectable.
Willful causing or allowing of substantial damage to premises and refusal to both pay the reasonable cost of repair and cease causing damage, following written notice.	Even though damage is involved, an unconditional Three-Day Notice to Quit is not allowed. Only a three-day notice that gives the tenant the option of ceasing to cause damage and pay for repair is allowed.
Tenant refuses to agree to rental agreement or lease on expiration of prior one, where new proposed agreement contains no new or unlawful terms.	This applies only if a lease or rental agreement expires of its own terms. No notice is required. However, tenant must have refused to sign a new one containing the same provisions; an improvised notice giving the tenant several days to sign the new agreement or leave is a good idea, even though not required by ordinance or state law.
Tenant continued to be so disorderly as to disturb other tenants, following written notice to cease, or is otherwise subject to eviction under CCP § 1161(4), for committing a nuisance, very seriously damaging the property, or subletting contrary to the lease or rental agreement, unless the landlord has unreasonably withheld consent to sublet where original tenant remains, property is not illegally overcrowded as a result of the subletting, and other requirements are met—see ordinance for details.	Although a warning notice should precede three-day notice based on disturbing neighbors, the three-day notice, according to CCP § 1161(4), may be an unconditional Three-Day Notice to Quit.
Tenant, after written notice to cease, continues to refuse landlord access to the property as required by CC § 1954.	If provision is in lease, three-day notice giving tenant option of letting landlord in or moving. If not, and tenancy is month to month, 30-day notice specifying reason, following written demand for access.
Landlord wants to make substantial repairs to bring property into compliance with health codes, and repairs not possible while tenant remains.	Under state law, eviction for this reason is allowed only if rental agreement is month to month, not for a fixed term. Landlord must first obtain all permits required for the remodeling, must provide alternative housing for the tenant (at the same rent) if he owns other vacant units in city, and must give evicted tenant right of first refusal to rerent after remodeling is finished. (Tenant given alternate temporary housing may be evicted from it if he refuses to move into old unit after work is completed.)
Landlord wants to demolish property.	Landlord must first obtain city "removal permit." (Although ordinance requires "good faith" to demolish, a euphemism for not doing it because of rent control, the state Ellis Act severely limits cities from refusing demolition permits on this basis.)

Reasons Allowed for Just Cause Evictions	Additional Local Notice Requirements and Limitations
Landlord wants to move self, spouse, parent, or child into property, and no comparable vacant unit exists in the property.	30-day notice terminating month-to-month tenancy for this reason must specify name and relationship of person moving in. (Month-to-month tenancies only.)
Tenant, after written notice to cease, continues to conduct illegal activity on the premises.	Although a warning notice should precede a three-day notice based on illegal activity, the three-day notice, according to CCP § 1161(4), may be an unconditional Three-Day Notice to Quit.
Landlord wants to move in herself, lived there previously, and lease or rental agreement specifically allows for this.	Termination procedure must be in accordance with lease provision. Thirty days' written notice is required to terminate month-to-month tenancy unless agreement provides for lesser period as short as seven days.
Landlord wants to go out of rental business under state Ellis Act.	The requirement that the landlord must give the tenant six months' notice and pay $4,500 in relocation fees to tenants of each unit was ruled illegal, as preempted by the state Ellis Act, in *Channing Properties v. City of Berkeley*, 11 Cal.App. 4th 88, 14 Cal.Rptr. 2d 32 (1992).

Beverly Hills

Name of Ordinance
Rent Stabilization Ordinance, Beverly Hills Municipal Code, Title 4, Chapters 5 and 6, §§ 4-5-101 to 4-6-8.

Adoption Date
4/27/79. Last amended 6/18/04.

Exceptions
Units constructed after 10/20/78, units that rented for more than $600 on 5/31/78, single-family residences, rented condominium units. (§ 4-5.102.)

Administration
Community Presentation Rent Stabilization
455 North Rexford Drive
Beverly Hills, CA 90210
310-285-1031
Website: www.beverlyhills.org/rent

Registration
Not required.

Vacancy Decontrol
Rents may be increased to any level on rerenting following eviction for nonpayment of rent, as well as for voluntary vacancies.

Once property is rerented, it is subject to rent control based on the higher rent.

Just Cause
Required for units other than those that rented for more than $600 on 5/31/78; for these units, a month-to-month tenancy may be terminated only on 60 days' notice, however. (§§ 4-5-501 to 4-5-513.)

Other Features
Though not required by the ordinance, termination notice should state specific reason for termination; this indicates compliance with ordinance, as called for in item 13 in the unlawful detainer complaint. Landlord is required to pay tenant substantial relocation fee if evicting to move in self or relative, or to substantially remodel, demolish, or convert to condominiums. Tenant may sue landlord who uses moving-in of self or relative as a "pretext" for eviction, for three times the rent that would have been due for the period the tenant was out of possession.

Reasons Allowed for Just Cause Evictions	Additional Local Notice Requirements and Limitations
Nonpayment of rent.	Ordinary Three-Day Notice to Pay Rent or Quit is used.
Breach of lease provision, following written notice to correct problem.	Three-Day Notice to Cure Covenant or Quit is used. The tenant must be given "written notice" of the breach, which precludes an unconditional Three-Day Notice to Quit, even if the breach is uncorrectable.
Commission of a legal nuisance (disturbing other residents) or damaging the property.	Unconditional Three-Day Notice to Quit may be used.
Tenant is using the property for illegal purpose. This specifically includes overcrowding as defined in ordinance based on number of bedrooms and square footage.	Unconditional Three-Day Notice to Quit may be used.
Tenant refuses, after written demand by landlord, to agree to new rental agreement or lease on expiration of prior one, where proposed agreement contains no new or unlawful terms.	This applies when a lease or rental agreement expires of its own terms. The ordinance requires the landlord to have made a written request for renewal or extension at least 30 days before the old one expired.
Tenant has refused the landlord reasonable access to the property as required by CC § 1954.	If access provision is in lease, three-day notice giving tenant option of letting landlord in or moving. If not, and tenancy is month to month, 30-day notice specifying reason, following written demand for access to property.

Reasons Allowed for Just Cause Evictions	Additional Local Notice Requirements and Limitations
Fixed-term lease has expired, and person occupying property is subtenant not approved by landlord.	Eviction is allowed on this basis only if person living there is not original tenant or approved subtenant. If lease has not expired and contains no-subletting clause, Three-Day Notice to Quit to evict for breach of lease.
Landlord wants to move self, parent, or child into property, and no comparable vacant unit exists in the property. In multiple-unit dwelling, landlord can evict only the most recently moved-in tenant for this reason.	Landlord must give tenant 90-day notice that states the name, relationship, and address of person to be moved in, and a copy of the notice must be sent to the City Clerk. Landlord must also pay tenant(s) a "relocation fee" of up to $3,000, depending on the length of tenancy and the size of unit. The fee must be paid when the tenant leaves, or tenant can sue landlord for three times the fee plus attorney's fees. (§ 11-7.05.) Landlord does not have to pay fee if tenant fails to leave at end of 90-day period or pays to relocate tenant to comparable housing elsewhere. Disabled tenants or tenants who are sixty-two (62) years of age or older and who have lived in a unit for at least one year prior to the required date of notice are entitled to a one-year notice period as well as relocation fees up to $5,000. (§ 4-5-513(C)(6).)
Employment of resident manager has been terminated and the property is needed for occupancy by the new manager.	This type of eviction is not covered in this book because the question of what notice is required is extremely complicated, depending in part on the nature of the management agreement. You should seek legal advice.
Landlord wants to demolish property or convert to condominiums, or otherwise remove property from rental market.	Landlord must first obtain removal permit from city. For substantial remodeling, tenant gets right of first refusal when work done. Landlord must give tenant 90 days' notice (§ 4-5-511). Landlord must also either pay tenants the actual costs of relocating to a comparable unit or a 'relocation fee' of up to $15,000, depending on the length of tenancy and the size of unit. (§ 4-5-511.)
Landlord wants to substantially remodel property.	Landlord must first obtain removal permit from city. For substantial remodeling, tenant gets right of first refusal when work done. Landlord must give tenant one year's notice. Landlord must also either pay tenants the actual costs of relocating to a comparable unit or a "relocation fee" up to $3,000 ($5,000 where the tenant is a senior citizen, handicapped or terminally ill), depending on the length of tenancy and the size of unit. The fee must be paid when the tenant leaves, or tenant can sue landlord for three times the fee plus attorney's fees. Landlord does not have to pay fee if tenant fails to leave at end of 90-day period. Notice, if not accompanied by fee, must inform tenant of fee amount and that it is payable when the tenant vacates. The notice cannot be given until city approval of the project is obtained, and a copy of the notice must be sent to the City Clerk. Landlord must petition Board for permission and in some cases must provide replacement housing during remodeling.
The person in possession of the unit at the end of the rental term is a subtenant who was not approved by the landlord. (§ 4-5-508)	Unconditional Three-Day Notice to Quit may be used.

Campbell

Name of Ordinance
Campbell Municipal Code, Title 6, Ch. 6.09, §§ 6.09.010 to 6.09.190.

Adoption Date
1983. Last amended 12/98.

Exemption
Rental units on lots with three or fewer units. (§ 6.09.030(n).)

Administration
Campbell Rental Dispute Program
1055 Sunnyvale-Saratoga Road, #3
Sunnyvale, CA 94087
888-331-3332
Websites: www.ci.campbell.ca.us. The general city site includes the Municipal Code. The site for the Rental Dispute Program is www.housing.org/tenant-landlord-assistance/mandatory-mediation.

Registration
Not required.

Individual Adjustments
Tenants affected by an increase can contest it by filing a petition within 45 days after notice of increase or notice to quit, or 15 days from effective date of rent increase or notice to quit, whichever is later, or lose the right to object to the increase. Disputes raised by tenant petition are first subject to "conciliation," then mediation. If those fail, either party may file a written request for arbitration by city "Fact Finding Committee." Committee determines whether increase is "reasonable" by considering costs of capital improvements, repairs, maintenance, and debt service, and past history of rent increases. However, the Committee's determination is not binding. (§§ 6.09.050–6.09.150.)

Vacancy Decontrol
No restriction on raises after vacancy.

Eviction
Ordinance does not require showing of just cause to evict, so three-day and 30-day notice requirements and unlawful detainer procedures are governed solely by state law.

Just Cause
Not required.

Other Features
Rent increase notice must state: "Notice: Chapter 6.09 of the Campbell Municipal Code provides a conciliation and mediation procedure for property owners and tenants to communicate when there are disputes over rent increases. (Rent increases can include a significant reduction in housing services.) To use this nonbinding procedure, the tenants shall first make a reasonable, good faith effort to contact the property owner or the property owner's agent to resolve the rent increase dispute. If not resolved, the tenant may then file a petition within 45 calendar days of this notice or 15 calendar days following the effective day of the increase, whichever is later. There may be other tenants from your complex receiving a similar rent increase, in which case, the petitions will be combined. For more information you should contact the City's designated Agent at 408-243-8565. Petitioning for conciliation cannot guarantee a reduction in the rent increase."

Note. Because this ordinance does not provide for binding arbitration of any rent increase dispute, it is not truly a rent control ordinance. Compliance with any decision appears to be voluntary only.

East Palo Alto

Name of Ordinance
Municipal Code, Title 14, §§ 14.04.010–14.04.350; 14.02.

Adoption Date
11/23/83. Last amended 5/6/14.

Exception
With respect to all aspects of the ordinance except just cause evictions, units constructed after 1/01/88, single-family homes, units in owner-occupied two- and three-unit properties, and certain non-profit units. As noted, all landlords are subject to the ordinance's just cause eviction restrictions. (§ 14.04.160.)

Administration
Rent Stabilization Board
2415 University Avenue
East Palo Alto, CA 94303
650-853-3100
Website: www.ci.east-palo-alto.ca.us. This is the general city site with access to the Municipal Code.

Registration
Required.

Vacancy Decontrol
State law (CC § 1954.53) supersedes the ordinance. Upon voluntary vacancy or eviction for nonpayment of rent, rents may be increased to any level following such vacancies. Once property is rerented, it is subject to rent control based on the higher rent.

Just Cause
Required. This aspect of the ordinance applies even to new construction, which is otherwise exempt. Specific just cause to evict must be stated both in the notice and in any unlawful detainer complaint.

Other Features
Landlord's complaint must allege compliance with both the implied warranty of habitability and the rent control ordinance, except for evictions for remodeling or demolition. If the owner or relative 'move-in' on which eviction was based does not occur within two months of the tenant's leaving or is not maintained for at least twelve months, tenant can sue landlord to regain possession of property and recover actual damages. If the tenant proves intentional misrepresentation, he or she is entitled to treble damages or $5,000, whichever is greater. (§ 14.04.180(C).)

East Palo Alto's ordinance does not specifically allow eviction for illegal use of the premises, such as dealing drugs. Still, if the lease has a clause prohibiting illegal use of the premises, landlord can evict for breach of lease provision (see below). If there's no such lease provision, see an attorney about whether Code of Civil Procedure Section 1161(4)'s allowance of an eviction for illegal activity may "preempt" the local ordinance.

Reasons Allowed for Just Cause Evictions	Additional Local Notice Requirements and Limitations
Nonpayment of rent.	Ordinary Three-Day Notice to Pay Rent or Quit is used.
Breach of lease provision, following written notice to cease.	Three-Day Notice to Cure Covenant or Quit is used. Provision must be reasonable and legal and been accepted by the tenant or made part of the rental agreement. If the provision was added after the tenant first moved in, the landlord can evict for breach only if the tenant was told in writing that she didn't have to accept the new term. Ordinance forbids use of an unconditional notice.
Willful causing or allowing of substantial damage to premises and refusal to both pay the reasonable cost of repair and cease causing damage, following written notice.	Even though damage is involved an ordinary unconditional Three-Day Notice to Quit is not allowed. Only a three-day notice that gives the tenant the option of ceasing to cause damage and pay for the costs of repair, as demanded by the landlord, is allowed.

Reasons Allowed for Just Cause Evictions	Additional Local Notice Requirements and Limitations
Tenant refuses to agree to rental agreement or lease on expiration of prior one, where new proposed agreement contains no new or unlawful terms.	This applies only when a lease or rental agreement expires of its own terms. No notice is required. However, an improvised notice giving the tenant several days to sign the new agreement or leave is a good idea.
Tenant continues to be so disorderly as to disturb other tenants, following written notice to cease.	Even if the tenant is committing a legal nuisance for which state law would allow use of a Three-Day Notice to Quit, ordinance requires that three-day notice be in conditional "cease or quit" form.
Tenant, after written notice to cease, continues to refuse the landlord access to the property as required by CC § 1954.	If provision is in lease, use three-day notice giving tenant option of letting landlord in or moving. If not, and tenancy is month to month, a 30-day notice specifying reason, following written demand for access to property.
Landlord wants to make substantial repairs to bring property into compliance with health codes, and repairs not possible while tenant remains.	Under state law, eviction for this reason is allowed only if rental agreement is month to month. Thirty-day notice giving specific reason must be used. Landlord must first obtain all permits required for the remodeling, must provide alternative housing for the tenant if he has other vacant units in city, and must give evicted tenant right of first refusal to rerent after remodeling is finished. (Tenant given alternate housing may be evicted from it if he refuses to move into old unit after work is completed. § 14.04.290.A.10.)
Landlord wants to demolish property.	Under state law, eviction for this reason is allowed only if rental agreement is month to month. Thirty-day notice giving specific reason must be used. Landlord must first obtain all permits required for the remodeling, must provide alternative housing for the tenant if he has other vacant units in city, and must give evicted tenant right of first refusal to rerent after remodeling is finished. (Tenant given alternate housing may be evicted from it if he refuses to move into old unit after work is completed.) (Although ordinance requires "good faith" to demolish, a euphemism for not doing it because of rent control, the state Ellis Act severely limits cities refusing demolition permits on this basis.)
Landlord wants to move self, spouse, parent, grandparent, child, or grandchild into property.	Under state law, eviction for this reason is allowed only if rental agreement is month to month. Thirty-day notice giving specific reason must be used. Also, thirty-day notice terminating month-to-month tenancy for this reason should specify name and relationship of person moving in.

Fremont

Name of Ordinance
City of Fremont Residential Rent Increase Dispute Resolution Ordinance (RRIDRO), Ordinance No. 2253, Fremont Municipal Code, Title III, Chapter 9.60, §§ 960.010–960.120.

Adoption Date
7/22/97, last amended 5/8/01.

Exception
None. Ordinance applies to "any housing unit offered for rent or lease in the city consisting of one or more units." (§ 9.60.020.)

Administration
Project Sentinel
39155 Liberty Street, #D440
Fremont, CA 94538
510-574-2270
FAX: 510-574-2275
Website: http://housing.org/tenant-landlord-assistance/mandatory-mediation

Registration
Not required.

Rent Formula
No fixed formula; landlord must respond to Mediation Services within two business days and participate in good faith in conciliation, mediation, and/or fact-finding proceedings, or rent increase notice can be ruled void. (§§ 9.60.030, 9.60.040.) Also, unless otherwise agreed to by the parties in writing, only one rent increase is allowed in any 12-month period. (§ 9.60.030).)

Individual Adjustments
Tenants affected by an increase can contest it by contacting Mediation Services within 15 days. Disputes raised by tenant request are first subject to conciliation, then mediation. If those fail, either party may file a written request for determination of the dispute by a fact-finding panel. This panel determines if the increase is reasonable by considering costs of capital improvements, repairs, existing market rents, return on investment, and the Oakland/San Jose All Urban Consumer Price Index. Panel's decision is not binding, but if landlord fails to appear or fails to participate in good faith in conciliation, education, or fact-finding process, that "shall void the notice of rent increase for all purposes." (§§ 3-1925(g), 1930(e), 1935(l).)

Rent Increase Notice Requirements
Landlords are "encouraged to provide at least 90 calendar days' notice of any rent increase," but notices need only "… meet the notice requirements of state law." (§ 9.60.040(c). All tenants, on moving in, must be provided a notice informing them of the dispute resolution programs, and that they can receive a copy by calling the City Office of Neighborhoods at 510-494-4500. All rent increase notices must show the name, address, and phone number of the responsible party (§ 3-1915(b)), and must also state the following in bold type:

> **"NOTICE: You are encouraged to contact the owner or manager [*list name*] of your rental unit to discuss this rent increase. However, chapter 19 of Title III of the Fremont Municipal Code provides a procedure for conciliation, mediation, and fact finding for disputes over rent increases. To use the procedure and secure additional information about the city ordinance, you must contact Mediation Services at 510-733-4945 within fifteen days following receipt of this notice."**

If this language is not included, the notice is not valid. (§ 9.60.030(b).)

Vacancy Decontrol
No restriction on raises after vacancy.

Eviction
Ordinance does not require showing of just cause to evict, so three-day and 30-day notice requirements and unlawful detainer procedure are governed solely by state law.

Note. Because this ordinance does not provide for binding arbitration of any rent increase dispute, it is not a true rent control ordinance. Compliance with any decision appears to be voluntary, except that if a city mediator or fact finder rules the landlord has failed to appear or act in "good faith" in any conciliation, mediation, or fact-finding proceeding, the rent increase notice can be ruled invalid. In this respect, the ordinance could, under certain circumstances, act as a sort of mild rent control.

Gardena

Name of Ordinance
Residential Rent Mediation and Arbitration, Gardena Municipal Code, Chapter 14.04, §§ 14.04.010 to 14.04.290.

Adoption Date
4/1987. Last amended 2008.

Exception
None. Ordinance applies to "any rental unit." (§ 14.04.020.)

Administration
Gardena Rent Mediation Board
1700 W. 162nd Street
Gardena, CA 90247
310-217-9503
Website: www.ci.gardena.ca.us/Departments/CityManagers/rentmediation.html

Registration
Not required.

Vacancy Decontrol
Landlord may charge any rent after tenant vacates. This is a mediation/arbitration ordinance that allows tenants to contest rent increases, not the initial rent charged.

Just Cause
Not required.

Other
Where a rent increase notice increases the rent to more than 5% over what was charged in the past 12 months, the notice must notify the tenant of the right to have the city Rent Board mediate the increase, by filing a petition within ten business days. If landlord fails to attend mediation or produce documents on request, Rent Board can disallow the increase. If mediation fails, the matter goes to binding arbitration.

Glendale

Name of Ordinance
Just Cause and Retaliatory Evictions Ordinance
Glendale Municipal Code, Chapter 9.30, §§ 9.30.010-9.30.100

Adoption Date
2002, last amended 2008.

Exceptions
Leases of one year or more. (§ 9.30.032.)

Administration
None specified.

Registration
Not required.

Vacancy Decontrol
Not applicable (ordinance does not regulate rents)

Just Cause
Required. At the time landlord delivers a 30-, 60-, or 3-day notice, landlord must also provide the tenant with a written notice that recites the landlord's legal grounds for terminating the tenancy and tenant's right to relocation benefits, if applicable. (§ 9.30.040.)

Other Features
Tenants entitled to relocation fee of twice the fair market rent, plus $1,000, in certain instances. (§ 9.30.035.) In an eviction lawsuit brought by the landlord to recover possession of the rental, the tenant may raise as an affirmative defense the landlord's failure to abide by any provision of the ordinance. (§ 9.30.060.)

Reasons Allowed for Just Cause Evictions
Nonpayment of rent, breach of a "lawful obligation or covenant," nuisance, or illegal use of the premises or permitting any illegal use within 1,000 feet of the unit. "Illegal use" specifically includes all offenses involving illegal drugs, such as marijuana (without a doctor's prescription).
When an unauthorized subtenant not approved by the landlord is in possession at the end of a lease term.
When a tenant refuses to allow the landlord access "as permitted or required by the lease or by law."
When the landlord offers a lease renewal of at least one year, serves a notice on the tenant of the offer at least 90 days before the current lease expires, and the tenant fails to accept within 30 days.
When the landlord plans to demolish the unit or perform work on it that costs at least eight times the monthly rent, and the tenant's absence is necessary for the repairs; or when the landlord is removing the property from the rental market, or seeks to have a spouse, grandparent, brother, sister, in-law, child, or resident manager (if there is no alternate unit available) move into the unit. Under state law, these grounds may be used only if the tenancy is month-to-month, and 30 or 60 days' written notice is given. The landlord must pay the tenant relocation expenses of two months' rent for a comparable unit plus $1,000.
The landlord seeks in good faith to recover possession of the rental unit in order to comply with a contractual agreement relating to the qualifications of tenancy or a governmental agency's order to vacate.
The tenant continues to smoke in the rental unit or in common areas where smoking is prohibited. (GMC § 8.52.080.)

Hayward

Name of Ordinance
"Residential Rent Stabilization," most recent ordinance is No. 03-01 C.S.

Adoption Date
9/13/83. Last amended 1/21/03.

Exceptions
Units first occupied after 7/1/79, units owned by landlord owning four or fewer rental units in the city. (§ 2(l).)

Administration
Rent Review Office
777 B Street, 4th Floor
Hayward, CA 94541
510-583-4454
Website: www.ci.hayward.ca.us. Provides no rent control information. Municipal Code is accessible; the rent control ordinance is not part of Municipal Code, but you can go from the "Municipal Code" page to "Other Ordinances," and find Ordinance 03-01.

Registration
Not required.

Vacancy Decontrol
Rent controls are permanently removed from each rental unit after a voluntary vacancy followed by the expenditure by the landlord of specified sums on improvements, and city certification of compliance with City Housing Code (Section 8).

Units still subject to controls (those for which there were no voluntary vacancies in preceding years) can be rerented for any rent amount, with property being subject to controls based on the higher rent.

Just Cause
Required. (§ 19(a).) This aspect of the ordinance applies even to voluntarily vacated property no longer subject to rent control. Specific good cause to evict must be stated in both the notice and in any unlawful detainer complaint. (§ 19(b).)

Special Features
Tenant may defend any eviction lawsuit on the basis of the landlord's failure to provide tenant with any of the information required under the ordinance. (§ 19(b).)

Reasons Allowed for Just Cause Evictions	Additional Local Notice Requirements and Limitations
Nonpayment of rent.	Ordinary Three-Day Notice to Pay Rent or Quit is used.
Breach of lease provision following written notice to cease.	Three-Day Notice to Cure Covenant or Quit is used. Provision must be reasonable and legal and have been accepted by the tenant or made part of the rental agreement. If the provision was added after the tenant first moved in, the landlord can evict for breach only if the tenant was told in writing that she didn't have to accept the new term. Notice must give the tenant the option of correcting the problem.
Willful causing or allowing of substantial damage to premises and refusal to both pay the reasonable cost of repair and cease causing damage, following written notice.	Even though damage is involved an ordinary unconditional Three-Day Notice to Quit is not allowed. Only a three-day notice that gives the tenant the option of ceasing to cause damage and pay for the costs of repair, as demanded by the landlord, is allowed.
Tenant refuses to agree to rental agreement or lease on expiration of prior one, where new proposed agreement contains no new or unlawful terms.	This applies only when a lease or rental agreement expires of its own terms. No notice is required. However, an improvised notice giving the tenant several days to sign the new agreement or leave is a good idea.

Reasons Allowed for Just Cause Evictions	Additional Local Notice Requirements and Limitations
Tenant continues to be so disorderly as to disturb other tenants, following written notice to cease.	Even if the tenant is committing a legal nuisance for which state law would allow use of a Three-Day Notice to Quit, ordinance requires that three-day notice be in conditional "cease or quit" form.
Tenant, after written notice to cease, continues to refuse the landlord access to the property as required by CC § 1954.	If provision is in lease, three-day notice giving tenant option of letting landlord in or moving. If not, and tenancy is month to month, 30-day notice specifying reason, following written demand for access to property.
Landlord wants to make substantial repairs to bring property into compliance with health codes, and repairs not possible while tenant remains.	Under state law, eviction for this reason is allowed only if rental agreement is month to month. Thirty-day notice giving specific reason must be used. Landlord must first obtain all permits required for the remodeling, and must give tenant notice giving him first chance to rerent after remodeling is finished. (No requirement for alternative housing.)
Landlord wants to demolish property.	Under state law, eviction for this reason is allowed only if rental agreement is month-to-month. Thirty-day notice giving specific reason must be used. Landlord must first obtain all necessary permits. (Although ordinance requires "good faith" to demolish, a euphemism for not doing it because of rent control, the state Ellis Act severely limits cities from refusing demolition permits on this basis.)
Landlord wants to move self, spouse, parent, child, stepchild, brother, or sister into property, and no comparable vacant unit exists in the property.	Under state law, eviction for this reason is allowed only if rental agreement is month-to-month. Thirty-day notice giving specific reason must be used. Landlord must first obtain all permits required for the remodeling, and must give tenant notice giving him first chance to rerent after remodeling is finished. (No requirement for alternative housing.) Thirty-day notice terminating month-to-month tenancy for this reason should specify name and relationship of person moving in.
Landlord wants to move in herself, and lease or rental agreement specifically allows this.	Termination procedure must be in accordance with lease provision. Thirty days' written notice is required to terminate month-to-month tenancy unless agreement provides for lesser period as short as seven days.
Tenant is using the property illegally.	Three-Day Notice to Quit is used.
Tenant continues, after written notice to cease, to violate reasonable and legal regulations applicable to all tenants generally, if tenant accepted regulations in writing in the lease or rental agreement, or otherwise.	If tenancy is not month to month and violation is very serious, Three-Day Notice to Perform Covenant or Quit. If tenancy is month to month, 30-day notice preceded by written warning.
Lawful termination of apartment manager's employment, where he or she was compensated with use of apartment.	This type of eviction is not covered in this book because the question of what notice is required is extremely complicated, depending in part on the nature of the management agreement. You should seek legal advice.

Los Angeles

Name of Ordinance
Rent Stabilization Ordinance, Los Angeles Municipal Code, Chapter XV, §§ 151.00–155.09.

Adoption Date
4/21/79. Last amended 12/11.

Exceptions
Units constructed (or substantially renovated with at least $10,000 in improvements) after 10/1/78, "luxury" units (defined as 0, 1, 2, 3, or 4+ bedroom units renting for at least $302, $420, $588, $756, or $823, respectively, as of 5/31/78), single-family residences, except where two or more houses are located on the same lot. (§ 151.02.G, M.)

Administration

Main office
1200 West 7th Street, 1st Floor
Los Angeles, CA 90017

Central Regional Office
3550 Wilshire Blvd., Suite 1500
Los Angeles, CA 90010

East Regional Office
2215 N. Broadway
Los Angeles, CA 90031

North Regional Office
6640 Van Nuys Blvd.
Van Nuys, CA 91405

West Regional Office
1645 Corinth Ave., Suite 104
Los Angeles, CA 90025

Mark Ridley-Thomas Constituent Service Center
8475 S. Vermont Ave., 2nd Floor
Los Angeles, CA 90044

For information regarding the ordinance, call the Los Angeles Housing & Community Investment Department at 866-557-7368 (RENT).

Websites: http://lahd.lacity.org/lahdinternet. Click "Residents" or "Property Owners," as appropriate for you. For the L.A. Municipal Code, navigate the city's main website at www.lacity.org. (See front of this appendix.)

Registration
Required.

Vacancy Decontrol
Landlord may charge any rent after a tenant either vacates voluntarily or is evicted for nonpayment of rent or breach of a rental agreement provision, or to substantially remodel. (Controls remain if landlord evicts for any other reason, fails to remodel after evicting for that purpose, or terminates or fails to renew a subsidized-housing lease with the city housing authority.) However, once the property is rerented, it is subject to rent control based on the higher rent. (§ 151.06.C.)

Just Cause
Required. (§ 151.09.) Every termination notice must state "the reasons for the termination with specific facts to permit a determination of the date, place, witnesses, and circumstances concerning the reason." (§ 151.09.C.1.) Tenant may not defend unlawful detainer action on the basis of lack of good cause or failure of the notice to state the reason if tenant has disobeyed a pretrial court order requiring him or her to deposit rent into court; see Code of Civil Procedure Section 1170.5 and *Green v. Superior Court*, 10 Cal.3d 616 (1974). (§ 151.09.E.) State law requires use of a 60-day termination notice of month-to-month tenancy, instead of a 30-day notice, for this city, if the tenant has occupied the premises for a year or more.

Other Features
Tenant may defend on the basis that the landlord failed to register the property in accordance with the ordinance. (§ 151.09.F.)

Reasons Allowed for Just Cause Evictions	Additional Local Notice Requirements and Limitations
Nonpayment of rent.	Ordinary Three-Day Notice to Pay Rent or Quit is used.
Breach of lease provision, following written notice to cease. (Landlord may not evict based on breach of no-pets clause added by notice of change of terms of tenancy, where no such clause existed at the outset of the tenancy. § 151.09.D.)	Three-Day Notice to Cure Covenant or Quit is used. The ordinance requires that the tenant be given "written notice to cease," which precludes an unconditional Three-Day Notice to Quit, even if the breach can be considered uncorrectable.
Commission of a legal nuisance (disturbing other residents) or damaging the property.	Unconditional Three-Day Notice to Quit may be used.
Tenant is using the property for illegal purpose.	Unconditional Three-Day Notice to Quit may be used.
Tenant refuses to agree to rental agreement or lease on expiration of prior one, where new proposed agreement contains no new or unlawful terms.	This applies only when a lease or rental agreement expires of its own terms. No notice is required. However, an improvised notice giving the tenant several days to sign the new agreement or leave is a good idea, even though not required by ordinance or state law.
Tenant, after written notice to cease, continues to refuse the landlord access to the property as required by CC § 1954.	If provision is in lease, three-day notice giving tenant option of letting you in or moving. If not, and tenancy is month to month, 30-day notice specifying reason, following previous written demand for access to property.
Fixed-term lease has expired, and person occupying property is subtenant not approved by landlord.	Eviction on this basis is allowed only if person living there is not original tenant or approved subtenant. No notice is required. If lease has not expired and contains no-subletting clause, Three-Day Notice to Quit to evict for breach of lease.
Landlord wants to move self, spouse, parent, child, or legally required resident manager into property. Landlord must pay relocation fee of $2,000-$2,500 to tenants except where moving legally required manager into property.	Only month-to-month tenant can be evicted on this ground. Landlord must serve tenant with copy of a form, the original of which must first be filed with the Community Development Department, that specifies the name and relationship of the person to be moving in.
Landlord wants to: (1) demolish the unit, or (2) undertake "Primary Renovative Work," under a "Tenant Habitability Plan" filed with the Housing Department, and the tenant is "unreasonably interfering" with that plan; or (3) substantially renovate the rental unit, where the landlord has complied with all necessary notices and relocation requirements, and the tenant has refused to cooperate with the landlord's plans.	Only month-to-month tenant can be evicted on this ground. 30-day notice specifying this reason used. Landlord must serve tenant with copy of a filed Community Development Department form describing the renovation work or demolition.
Landlord seeks to permanently remove the unit from the rental housing market.	Only month-to-month tenant can be evicted on this ground. 30-day notice specifying this reason used.

Los Gatos

Name of Ordinance
Los Gatos Rental Dispute Mediation and Arbitration Ordinance, Los Gatos Town Code, Chapter 14, Article VIII, §§ 14.80.010–14.80.315.

Adoption Date
10/27/80. Last amended 9/19/11 (§ 14.80.315).

Exception
Rental units on lots with two or fewer units on the same parcel of land, single-family residences, rented condominium units. (§ 14.80.020.)

Administration
Rental Dispute Resolution
1490 El Camino Real
Santa Clara, CA 95050
408-402-0307 Ext. 8016
Website: www.losgatosca.gov/347/Rental-Dispute-Resolution-Program. Choose "Government," then "Town Code." Rent control provisions are in Chapter 14, Article VIII. The site for the Rental Dispute Program is http://housing.org/tenant-landlord-assistance/mandatory-mediation.

Registration
Not required. (However, a "regulatory fee" to pay for program is added to annual business license fee, when business license is required.)

Vacancy Decontrol
Landlord may charge any rent after a tenant vacates voluntarily or is evicted following Three-Day Notice for Nonpayment of Rent or other breach of the rental agreement. However, once the new rent for a vacated unit is established by the landlord and the property is rerented, it is subject to rent control based on the higher rent. (§ 14.80.310.)

Just Cause
Not required.

Other Features
Tenant faced with termination notice may invoke mediation/arbitration hearing procedure on eviction issue and stay landlord's eviction suit; if tenant wins mediation/arbitration hearing, eviction will be barred. (§ 14.80.110 and .115.)

Oakland

Name of Ordinance

"Residential Rent Adjustments and Evictions," Oakland Municipal Code, Title 8, Ch. 8.22, §§ 8.22.010–8.22.500. See also Title 8, Ch. 8.22, §§ 8.22.300–8.22.480; and Title 8, Ch. 8.22, §§ 8.22.600–8.22.680.

Adoption Date

10/7/80. Last amended 11/05/14.

Exceptions

Units constructed after 1/1/83, buildings "substantially rehabilitated" at cost of 50% of that of new construction, as determined by Chief Building Inspector. (§ 8.22.030.)

Administration

Rent Adjustment Program
250 Frank H. Ogawa Plaza, 5th floor
Oakland, CA 94612
510-238-3721
FAX: 510-238-6181
Website: www2.oaklandnet.com. For the Municipal Code, follow the directions at the beginning of this appendix. Go to Title 8, Chapter 8.22.

Registration

Not required.

Vacancy Decontrol

Landlord may charge any rent after a tenant vacates voluntarily or is evicted for nonpayment of rent. If tenant otherwise vacates involuntarily, landlord may not increase the rent for 24 months.

On eviction for reasons other than nonpayment of rent, ordinance allows increase of up to 12%, depending on rent increases over previous 12 months.

Once property is rerented, it is subject to rent control based on the higher rent.

Just Cause

Under a separate "Just Cause for Eviction" ordinance (Measure EE), enacted 11/5/02, landlords may terminate a month-to-month rental agreement (or refuse to renew a lease) only when the tenant has failed to pay the rent (or has violated another important lease term), refused to enter into a written renewal of a rental agreement or lease, caused substantial damage, disturbed the peace and quiet of other tenants, engaged in illegal activities, or refused entry to the landlord when properly asked. Landlords may also terminate rental agreements or not renew leases when they want to live in the unit themselves (or intend it for a close family member), or to substantially renovate the unit. (See Municipal Code Title 8, Ch. 22 §§ 8.22.300–8.22.480; Also see 11/05/14 Tenant Protection Ordinance ("TPO"), §§ 8.22.600–8.22.680.)

Other Features

Rent increase notices must be in a form prescribed by Section 8.22.070(H)(1), which requires tenant be notified of right to petition rent board. All tenants, on moving in, must be provided a notice informing them of their rights under the ordinance. (§ 8.22.060.)

Landlord evicting to "rehabilitate" the property (presumably to obtain permanent exemption from controls) must obtain building permit before eviction.

Palm Springs

Name of Ordinance
"Rent Control," Palm Springs Municipal Code, Title 4, Chapters 4.02, 4.04, 4.08, §§ 4.02.010–4.08.190.

Adoption Date
9/1/79. Last amended, by initiative, 12/94.

Exceptions
Units constructed after 4/1/79; owner-occupied single-family residences, duplexes, triplexes, and fourplexes; units where rent was $450 or more as of 9/1/79. (§§ 4.02.010, 4.02.030.)

Administration
Housing Assistance
3200 East Tahquitz Canyon Way
Palm Springs, CA 92262
760-778-8465
The city website is www.ci.palm-springs.ca.us.

Registration
Required. (§ 4.02.085.)

Vacancy Decontrol
Rent controls are permanently removed after tenant voluntarily vacates or is evicted for cause. (§ 4.02.075.) Very few properties remain subject to controls.

Just Cause
Landlords must show just cause to evict for units subject to rent control. After voluntary vacancy or eviction for cause, just cause requirement does not apply anymore. (§ 4.08.060(j)(2).)

Reasons Allowed for Just Cause Evictions	Additional Local Notice Requirements and Limitations
Nonpayment of rent.	Ordinary Three-Day Notice to Pay Rent or Quit is used.
Breach of lease provision.	Three-Day Notice to Cure Covenant or Quit is used, or Three-Day Notice to Quit where breach cannot be cured, or improper subletting.
Creation or maintenance of a nuisance.	State law allows use of a Three-Day Notice to Quit.
Tenant is using the property illegally.	Three-Day Notice to Quit is used.
Landlord wants to move self, parent, child, grandparent, brother or sister, mother-in-law, father-in-law, son-in-law, or daughter-in-law into property.	Under state law, eviction for this reason is allowed only if rental agreement is month to month. Thirty-day notice giving specific reason must be used.

Richmond

Name of Ordinance
Chapter 7.105—Eviction Control on Residential Property in Foreclosure.

Adoption date
6/2009.

Note. Ordinance cited here applies only to properties in foreclosure. In 2015 the Richmond city council both enacted and repealed an ordinance establishing a rent control board and just cause requirements for rentals in general.

Exceptions
Units owned or operated by any government agency or whose rent is subsidized by any government agency, including but not limited to Section 8 housing subsidies. Does not apply to a "purchaser for value," someone who is not employed by, affiliated with, or acting on behalf of an entity that acquires title to a rental unit following sale of the unit under the power of sale in a deed of trust or foreclosure, and who is not purchasing the property for the purpose of evading the protections of the ordinance. (§ 7.105.010.)

Administration
None specified.

Registration
Not required.

Vacancy Decontrol
Not applicable (ordinance does not regulate rents).

Just Cause
Required for bank-owned properties. At the time landlord delivers a 30-, 60-, or three-day notice, landlord must also provide the tenant with a written notice that recites the landlord's legal grounds for terminating the tenancy. If relocation assistance is required, landlord must also serve tenant with a written notice describing tenant's right to relocation assistance. (§ 7.105.040.)

Other Features
Landlord may not retaliate against tenants who seek to assert their rights under this ordinance or state or federal law, and tenants may raise such retaliation as a defense to an eviction. Evidence of tenants' assertion of their rights within 180 days prior to the alleged retaliation creates a rebuttable presumption of retaliation. (§ 7.105.050.) Evicted tenants may be entitled to relocation assistance (twice the monthly rent, plus $1,000). (§ 7.105.030.)

Reasons Allowed for Just Cause Evictions
Failure to pay rent within three days of receiving notice that rent is due.
Violation of a lease clause and failure to cure the violation (exempts failure to move out upon proper notice, and adding a dependent child to the tenancy).
Committing a nuisance or substantially interfering with the comfort, safety, or enjoyment of the landlord or other tenants. Using the rental unit or common areas (or permitting them to be used) for illegal purposes.
Refusing to sign a written extension of a lease or rental agreement, within seven days of receiving it, that contains terms that are substantially the same as the prior rental agreement.
Refusal to grant access as permitted by law.
Possession of the rental unit by an unapproved subtenant at the end of the lease term, or sale under the power of sale contained in a deed of trust, or foreclosure of either the rental unit or the building. (§ 7.105.020(7).)
Landlord seeks recovery of the rental for use by a resident manager or a qualified family member.
Landlord seeks to permanently remove the unit from rental housing, pursuant to state law; to demolish the unit; to perform work on the building that would make the unit uninhabitable for at least 30 days and that will cost not less than eight times the monthly rent.
To comply with a government order to empty the rental unit.
To comply with a contractual agreement or government regulation relating to the qualifications of tenancy with a government entity, when the tenant is no longer qualified.

San Diego

Name of Ordinance
"Tenants' Right to Know Regulations." San Diego Municipal Code §§ 98.0701 through 98.0760.

Adoption date
3/04, last amended 10/11.

Exceptions
Institutional facilities, such as schools; government-owned or subsidized property subject to substantially similar or greater state or federal eviction controls; rentals to boarders in the landlord's principal residence, where landlord and tenant share facilities; hotel, motel, rooming house rentals that are not single-room occupancy hotel rooms (as defined by San Diego Municipal Code Chapter 14, Article 3, Division 5); mobile homes; transient occupancies as defined by Civil Code Section 1940(b). Does not apply to tenants who have lived on the property less than two years. (§ 98.0730.)

Administration
None specified.

Registration
Not required.

Vacancy Decontrol
Not applicable (ordinance does not regulate rents).

Just Cause
Required. At the time landlord delivers a 30-, 60-, or 3-day notice, landlord must also provide the tenant with a written notice that recites the landlord's legal grounds for terminating the tenancy.

Other Features
In an eviction lawsuit brought by the landlord to recover possession of the rental, the tenant may raise as an affirmative defense the landlord's failure to abide by any provision of the ordinance.

Reasons Allowed for Just Cause Evictions
Refusal to give the landlord reasonable access to the rental unit for the purpose of making repairs or improvements, or for the purpose of inspection as permitted or required by the lease or by law, or for the purpose of showing the rental unit to a prospective purchaser or mortgagee.
Nonpayment of rent, violation of "a lawful and material obligation or covenant of the tenancy," commission of a nuisance, or illegal use of the premises.
Refusal "after written request of a landlord" to sign a lease renewal "for a further term of like duration with similar provisions."
To make necessary repairs or perform construction when removing the tenant is reasonably necessary to do the job, provided the landlord has obtained all necessary permits from the city.
When the landlord intends to withdraw all rental units in all buildings or structures on a parcel of land from the rental market, or when the landlord, a spouse, parent, grandparent, brother, sister, child, grandchild, or a resident manager plans to occupy the rental unit. These grounds may be used only if the tenancy is month to month (under state law, you're entitled to 60 days' written notice).

San Francisco

Name of Ordinance
Residential Rent Stabilization and Arbitration Ordinance, San Francisco Administrative Code, Chapter 37; and San Francisco Ordinance No. 218-14, "Short Term Rental Ordinance." Effective February 1, 2015, Administrative Code Chapter 41A (known as the Residential Unit Conversion Ordinance) was amended to allow tenants and owners who are permanent residents to rent all or a portion of their unit for tourist or transient use under certain conditions. Note that landlords may still prohibit such rentals.

Adoption Date
6/79. Last codified (conformed to current law as stated in court decisions) 4/25/10.

Exceptions
Units constructed after 6/79; buildings over 50 years old and "substantially rehabilitated" since 6/79. (§§ 37.2(r) and 37.2(s).)

Administration
San Francisco Rent Board
25 Van Ness Avenue, Suite 320
San Francisco, CA 94102
415-252-4602
FAX: 415-252-4699
"Fax-Back" Service (fax a question, they fax you an answer): 415-252-4660
Websites: www.ci.sf.ca.us for the city; for Rent Board, www.sfrb.org. The Municipal Code/ Administrative Code is available from the city official site, http://sfgov.org/government. Rent control laws (in superior format) and regulations are available from Rent Board site.

Registration
Not required.

Vacancy Decontrol
Landlord may charge any rent after a tenant vacates voluntarily or is evicted for cause. Once property is rerented for a year, it is subject to rent control based on the higher rent.

Just Cause
Required. Every termination notice must state "the grounds under which possession is sought" and must advise the tenant that advice regarding the notice is available from the Board. (§ 37.9.)

Other Features
Tenant or Board may sue landlord, following either unsuccessful eviction attempt or successful eviction based on falsified reason, for treble damages and attorney's fees. (§ 37.9(f).) Landlord must file copy of tenancy termination notice (except Three-Day Notice to Pay Rent or Quit) with rent board within ten days after it is served on the tenant. (§ 37.9(c).) Must have just cause to remove certain housing services (such as parking and storage facilities) from a tenancy. (§ 37.2(r).)

Section 37.3(11)(A), effective 11/9/15: Prohibits rent increases solely because of the addition of an occupant to an existing tenancy, notwithstanding a lease provision permitting such an increase; allows additional occupants (within specified occupancy limits) to occupy the rental unit notwithstanding a lease provision that limits the number of occupants or limits or prohibits subletting, if the landlord has unreasonably denied the tenant's request to add such occupant(s); requires landlord to provide 10-day opportunity to cure breach of lease for the unauthorized addition of occupants; amends provisions concerning certain just cause reasons for eviction; changes certain eviction notice requirements; imposes re-rental restrictions after certain no-fault evictions.

Beginning March 7, 2015, landlords are required to provide tenants specific written disclosures and file a form with the Rent Board certifying that the statutory written disclosures were provided to the tenants before initiating a buyout negotiation with the tenants. Buyout agreements are now required to be in writing and include specific statements in order to take effect. Landlords will have to file a copy of the buyout agreement with the Rent Board and keep certain records for up to 5 years. Tenants

will have 45 days to rescind any buyout agreement even if the landlord follows all of the new rules and procedures. If a landlord either fails to provide the written disclosures to the tenant, or fails to follow the filing and record-keeping rules of the new law, or if the buyout agreement fails to conform to the new law, the tenant, the City, or certain non-profit groups will be able to sue the landlord for actual and statutory damages and recovery of attorney fees. In addition, beginning October 31, 2014, any buyout agreement of an elderly or disabled tenant with more than 10 years of occupancy, or a catastrophically ill tenant with more than 5 years of occupancy, will bar the property forever from condo conversion. The buyout of "two or more tenants" beginning October 31, 2014, will delay condo conversion by a minimum of 10 years. The legislation is ambiguous as to whether the law limits condo conversion for 10 years when there is only one buyout agreement of two or more tenants, or buyout agreements of two or more tenants from two or more units; and as to whether the limits on condo conversion due to buyout agreements apply to lottery condo conversions only, or include non-lottery condo conversions, as well. Litigation regarding the validity of the entire law, as well as specific ambiguous and/or overreaching provisions of the law, has begun.

Reasons Allowed for Just Cause Evictions	Additional Local Notice Requirements and Limitations
Nonpayment of rent.	Ordinary Three-Day Notice to Pay Rent or Quit is used.
Tenant "habitually pays the rent late or gives checks which are frequently returned …."	This can only be used if tenancy is month to month, by using 30-day notice.
Breach of lease provision, following written notice to cease.	Three-Day Notice to Perform Covenant or Quit is used. Tenant must be given "written notice to cease," which precludes an unconditional Three-Day Notice to Quit, even if the breach is uncorrectable.
Commission of a legal nuisance (disturbing other residents) or damaging the property.	Unconditional Three-Day Notice to Quit may be used.
Tenant is using the property for illegal purpose.	The tenant is using or permitting a rental unit to be used for any illegal purpose, provided however that a landlord shall not endeavor to recover possession of a rental unit solely: (A) as a result of a first violation of Chapter 41A that has been cured within 30 days' written notice to the tenant; or, (B) because the illegal use is the residential occupancy of a unit not authorized for residential occupancy by the City. (§ 37.9(4).)
Tenant refuses, after written demand by landlord, to agree to new rental agreement or lease on expiration of prior one, where new proposed agreement contains no new or unlawful terms.	This applies only when a lease or rental agreement expires of its own terms. No notice is required. However, a written notice giving the tenant at least three days to sign the new agreement or leave should be served on the tenant with the proposed new lease or rental agreement.
Tenant, after written notice to cease, continues to refuse the landlord access to the property as required by CC § 1954.	If provision is in lease, three-day notice giving tenant option of letting landlord in or moving. If not, and tenancy is month to month, 30-day notice specifying reason, following written demand for access to property.
Landlord wants to sell unit following condominium-conversion approval pursuant to separate city ordinance.	Allowed only if rental agreement is month to month. Ownership must have been previously registered with Board. Landlord must get all necessary approvals first. New tenants must stay there for a year.
Landlord wants to demolish the unit.	Allowed only if rental agreement is month to month. Ownership must have been previously registered with Board. Landlord must obtain all necessary permits first.

Reasons Allowed for Just Cause Evictions	Additional Local Notice Requirements and Limitations
Landlord owning at least 25% interest (10% if bought before 2/91) wants to move self, parent, grandparent, child, grandchild, brother, sister, or spouse (including domestic partner) of any of the foregoing into the property. Note that spouses and domestic partners (those registered as such pursuant to the San Francisco Administrative Code Chapter 62.1 and 62.8) may aggregate their interests, but not tenants in common. Evictions for this reason are known as "owner move-in" evictions, or "OMI" evictions. They are the most contentious type of eviction and are often the subject of prolonged litigation. Before commencing an OMI eviction, you would be well advised to check the Ordinance and the Rent Board website, which is extremely helpful, for updates, details, and any added regulations.	Eviction for this reason is allowed only if rental agreement is month to month. Also, ownership must have been previously registered with Board. By popular vote in November 1998 (Proposition G), effective December 18, 1998, OMIs are not allowed as to: (1) Seniors 60 years of age or older who have lived in the rental for at least ten years; (2) Disabled or blind tenants who meet the Supplemental Security Income/California State Supplemental Program (SSI/SSP) criteria for disability, as determined by the Program or any other method approved by the Rent Board, who have lived in the rental for at least ten years; and (3) Tenants with a "catastrophic illness" (as certified by the tenant's primary care physician) who have lived in the rental for at least five years. There are several restrictions to allowable OMIs. The landlord must live in the same building as the unit that is the subject of the OMI (unless the landlord owns only one unit in the building). Only one "owner move-in" eviction is allowed for a single building. The unit that is the subject of the first OMI becomes the designated OMI unit for that building for the future. Landlords may not do an OMI as to a particular unit if there is a comparable vacant unit in the building, and must cease eviction proceedings if a comparable unit becomes available prior to recovering possession. For buildings of three or more units built before 6/79, the landlord must obtain a conditional use permit from the city planning department. Certain tenants will be entitled to a $1,000 relocation benefit from the landlord. The landlord or other qualified relative who occupies the recovered unit must move in within three months and reside there continuously for 36 months. Where tenant has lived in property over a year, and has a child attending school, evictions during school year are prohibited under some conditions. (§ 37.9(j).)
Landlord wants to rehabilitate the property or add capital improvements.	Allowed only if rental agreement is month to month. Ownership must have been previously registered with Board. Can't evict if rehab financed by city with "RAP" loans. If improvements are not "substantial rehabilitation" of building 50 or more years old, landlord must give tenant right of first refusal to reoccupy property when work is completed.
Landlord wants to permanently remove property from the rental housing market.	Allowed only if rental agreement is month to month. Ownership must have been previously registered with Board. Although the ordinance requires that the landlord must pay relocation compensation of $1,500-$3,000, the Court of Appeal ruled in a case involving Berkeley's ordinance that this requirement was illegal, as preempted by the state Ellis Act. (See *Channing Properties v. City of Berkeley,* 11 Cal.App. 4th 88, 14 Cal.Rptr.2d 32 (1992).)
Fixed-term lease has expired, and person occupying property is subtenant not approved by landlord.	No notice is required. Ordinance allows eviction on this basis only if person living there is not original tenant or approved subtenant. (If lease has not expired and contains no-subletting clause, Three-Day Notice to Quit to evict for breach of lease used.)

San Jose

Name of Ordinance
San Jose Rental Dispute Mediation and Arbitration Ordinance, San Jose Municipal Code, Title 17, Chapter 17.23, §§ 17.23.010–17.23.770.

Adoption Date
7/7/79. Last amended 7/1/03.

Exceptions
Units constructed after 9/7/79, single-family residences, duplexes, townhouses, and condominium units. (§ 17.23.150.)

Administration
San Jose Rental Rights and Referrals Program
200 East Santa Clara Street
San Jose, CA 95113
408-975-4480
Website: www.sanjoseca.gov. This general city site provides no rent control information. The phone menu, however, at 408-975-4480, provides helpful information. Municipal Code is accessible. Rent control portions are in Title 17, Chapter 17.23. The Rental Rights and Referrals website is www.sjhousing.org/Program/rentalrights.htm.

Registration
Not required.

Vacancy Decontrol
Landlord may charge any rent after a tenant vacates voluntarily or is evicted following Three-Day Notice to Pay Rent or Quit or other breach of the rental agreement. However, once the new rent for a vacated unit is established by the landlord and the property is rerented, it is subject to rent control based on the higher rent. (§ 17.23.190.)

Just Cause
Not required. Notice requirements and unlawful detainer procedures are governed solely by state law, except that 90 days' notice, rather than 60 days', is required to terminate a month to month tenancy if the tenant has lived there a year or more. (§ 17.23.610A.) Sixty days' notice is also required if the tenant is served with an offer to arbitrate. (§ 17.23.615.)

Other
All tenants, on moving in, must be provided a notice informing of their rights under the ordinance. (§ 17.23.030.) Rent increase notices must notify tenant of right to petition, time limits, and the city rent program's address and phone number. (§ 17.23.270.)

In addition, ordinance requires that 90-day notice of termination be given to a tenant of month-to-month tenancy that's lasted over a year, or a 60-day notice if served with an offer to arbitrate. We believe this provision is invalid as superseded by recent state law allowing a 60-day notice without an offer to arbitrate.

Important: Copies of Notices to Vacate must be sent to the city. (§ 17.23.760.)

Santa Monica

Name of Ordinance
Rent Control Charter Amendment, City Charter Article XVIII, §§ 1800–1821.

Adoption Date
4/10/79. Last amended 2014.

Exceptions
Units constructed after 4/10/79; owner-occupied single-family residences, duplexes, and triplexes; single-family dwellings not rented on 7/1/84. (Charter Amendment (C.A.) §§ 1801(c), 1815; Regulation (Reg.) §§ 2000 and following, 12000 and following.) However, rental units other than single-family dwellings not rented on 7/1/84 must be registered and the exemption applied for.

Administration
Rent Control Board
1685 Main Street, Room 202
Santa Monica, CA 90401
310-458-8751
Email: rent_control@csanta-monica.org
Websites: www.smgov.net/rentcontrol
This is an excellent site. Includes rent control laws in "Charter Amendment and Regulations"—both of which are not in the Municipal Code. See also www.tenant.net/Other_Areas/Calif/smonica/rentctrl.html.

Registration
Required. (C.A. §§ 1803(q), 1805(h).)

Vacancy Decontrol
State law (CC § 1954.53) supersedes the ordinance. Upon voluntary vacancy or eviction for nonpayment of rent, rents may be increased to any level following such vacancies. Once property is rerented, it is subject to rent control based on the higher rent.

Just Cause
Required. Specific good cause to evict must be stated in the termination notice. (Reg. § 1806(e).)

Other Features
Landlord's complaint must allege compliance with rent control ordinance. (C.A. § 1806.)

Reasons Allowed for Just Cause Evictions	Additional Local Notice Requirements and Limitations
Nonpayment of rent.	Ordinary Three-Day Notice to Pay Rent or Quit is used.
Breach of lease provision.	Three-Day Notice to Perform Covenant or Quit is used. Ordinance requires that the tenant has "failed to cure such violation," which precludes an unconditional Three-Day Notice to Quit, even if the breach is uncorrectable.
Willful causing or allowing of substantial damage to premises, or commission of nuisance that interferes with comfort, safety, or enjoyment of the property, following written notice.	No requirement for alternative three-day notice giving tenant the option of correcting the problem. Three-Day Notice to Quit may be used.
Tenant is convicted of using the property for illegal purpose.	Three-Day Notice to Quit may be used, but only if tenant is actually convicted. This appears to mean that drug dealers can't be evicted unless first convicted. This provision may violate state law, which does not require a conviction. See CCP § 1161(4).
Tenant refuses to agree to rental agreement or lease on expiration of prior one, where new proposed agreement contains no new or unlawful terms.	This applies only when a lease or rental agreement expires of its own terms. No notice is required. However, an improvised notice giving the tenant several days to sign the new agreement or leave is a good idea.

Reasons Allowed for Just Cause Evictions	Additional Local Notice Requirements and Limitations
Tenant, after written notice to cease, continues to refuse the landlord access to the property as required by CC § 1954.	If provision is in lease, three-day notice giving tenant option of letting landlord in or moving. If not, and tenancy is month to month, 30-day notice specifying reason, following written demand for access to property.
Fixed-term lease has expired, and person occupying property is subtenant not approved by landlord.	No notice is required. Eviction on this basis is allowed only if person living there is not original tenant or approved subtenant. (If lease has not expired and contains no-subletting clause, Three-Day Notice to Quit to evict for breach of lease.)
Landlord wants to move self, parent, child, brother, sister, or spouse of foregoing into property.	Eviction for this reason is allowed only if rental agreement is month to month. Landlord must include on the termination notice the name of the current tenant, the rent charged, and the name, relationship, and address of person to be moving in. The notice must be filed with the Board within three days of service on the tenant. (Reg. § 1806(e).) The landlord must also offer any comparable vacant unit in the same building to the tenant and must allow the tenant to move back into the property if the relative does not occupy it within 30 days after the tenant moves out.
Landlord wants to demolish property, convert to condominiums, or otherwise remove property from rental market. (City's very strict ordinance has been modified by the state Ellis Act, which severely limits cities from refusing removal permits. See *Javidzad v. City of Santa Monica*, Cal. App.3d 524, 251 Cal.Rptr. 350 (1988).)	Eviction for this reason allowed only if tenancy is month to month. Although the ordinance requires a landlord to pay a relocation fee of up to $4,000, the Court of Appeal ruled in a case involving Berkeley's ordinance that this requirement was illegal, as preempted by the state Ellis Act. (See *Channing Properties v. City of Berkeley,* 11 Cal.App.4th 88, 14 Cal.Rptr.2d 32 (1992).) That ruling appears to apply only in cases where the landlord just wants to remove the property from the housing market.

Thousand Oaks

Name of Ordinance
Rent Stabilization Ordinance, Ordinance Nos. 755-NS, 956-NS, 1284-NS.

Adoption Date
7/1/80. Last amended 5/20/97.

Exceptions
Apartment rent control does not apply to tenants who moved into their apartment units after 1987. Only tenants who have lived in the same rent-controlled unit since 1987 are eligible for rent control. Other exceptions include units constructed after 6/30/80; "luxury" units (defined as 0, 1, 2, 3, or 4+-bedroom units renting for at least $400, $500, $600, $750, or $900, respectively, as of 6/30/80); single-family residences, duplexes, triplexes, and fourplexes, except where five or more units are located on the same lot. (§ III.L of 956-NS.)

Administration
Community Development Department
2100 Thousand Oaks Boulevard,
Civic Arts Plaza, 2nd Floor, Suite B
Thousand Oaks, CA 91362
805-449-2322
Website: www.toaks.org. This is the official city site, but it has no rent control information. The Municipal Code is accessible, but rent control ordinances are not available online.

Registration
Required. (§ XIV.)

Vacancy Decontrol
Rent controls are permanently removed after tenant voluntarily vacates or is evicted for cause.

Just Cause
Required. (§ VIII.) Termination notice must state specific reason for termination.

Reasons Allowed for Just Cause Evictions	Additional Local Notice Requirements and Limitations
Nonpayment of rent.	Ordinary Three-Day Notice to Pay Rent or Quit is used.
Breach of lease provision, following written notice to correct.	Three-Day Notice to Cure Covenant or Quit is used. Ordinance requires that the tenant be given "written notice to cease," which precludes an unconditional Three-Day Notice to Quit, even if the breach is uncorrectable.
Tenant continues to damage property or disturb other tenants, following written notice to cease.	Even if the tenant is causing nuisance or damage for which state law would allow use of a Three-Day Notice to Quit, ordinance requires that Three-Day notice be in alternative "cease or quit" form.
Tenant is using the property for illegal purpose.	Ordinance allows use of unconditional Three-Day Notice to Quit.
Tenant refuses, after written demand by landlord, to agree to new rental agreement or lease on expiration of prior one, where new proposed agreement contains no new or unlawful terms.	This applies only when a lease or rental agreement expires of its own terms. No notice is required. However, written notice giving the tenant at least three days to sign the new agreement or leave should be served on the tenant with the proposed new lease or rental agreement.
Tenant has refused the landlord access to the property as required by CC § 1954.	If provision is in lease, Three-Day notice giving tenant option of letting landlord in or moving. If not, and tenancy is month to month, 30-day notice specifying reason.

Reasons Allowed for Just Cause Evictions	Additional Local Notice Requirements and Limitations
Fixed-term lease has expired, and person occupying property is subtenant not approved by landlord.	No notice is required. Eviction on this basis is allowed only if person living there is not original tenant or approved subtenant. (If lease has not expired and contains no-subletting clause, Three-Day Notice to Quit to evict for breach of lease.)
Landlord wants to substantially remodel, convert to condominiums, or demolish property.	Allowed under state law only if fixed-term tenancy has expired, or month-to-month tenancy is terminated by 30-day notice.
Landlord seeks to permanently remove the unit from the rental housing market.	Allowed under state law only if fixed-term tenancy has expired, or month-to-month tenancy is terminated by 30-day notice. (Although ordinance requires "good faith" to demolish, a euphemism for not doing it because of rent control, the state Ellis Act severely limits cities from refusing demolition permits on this basis.)

West Hollywood

Name of Ordinance

Rent Stabilization Ordinance, West Hollywood Municipal Code, Title 17, §§ 17.04.010–17.68.01, and Title 2, §§ 2.20.010–2.20.030.

Adoption Date

6/27/85. Last amended 2009.

Exceptions

Units constructed after 7/1/79 and units where owner has lived for two or more years ("just cause" eviction requirements do apply, however). However, many exemptions must be applied for in application for exemption (see below). (§ 17.24.010.)

Administration

Department of Rent Stabilization and Housing
8300 Santa Monica Boulevard
West Hollywood, CA 90069
323-848-6450
Websites: www.ci.west-hollywood.ca.us or www.weho.org. Click "City Hall," then "Municipal Code."

Registration

Required. (§§ 17.28.010–17.28.050.)

Vacancy Decontrol

State law (CC § 1954.53) supersedes ordinance except where tenant evicted for reason other than nonpayment of rent.

On voluntary vacancy or eviction for nonpayment of rent, rents may be increased to any level on rerenting following such vacancies. (§ 17.40.020.)

On eviction for reasons other than nonpayment of rent, ordinance does not allow an increase.

Once property is rerented, it is subject to rent control based on the higher rent.

Just Cause

Required. (§ 17.52.010.) This aspect of the ordinance applies even to new construction, which is otherwise exempt from ordinance. Termination notice must state "with particularity the specific grounds" and recite the specific paragraph of ordinance under which eviction sought. State law requires use of a 60-day termination notice of month-to-month tenancy, instead of a 30-day notice, for this city, if the tenant has occupied the premises for a year or more.

Other Features

Copy of any unlawful detainer summons and complaint must be filed with Rent Stabilization Commission. Numerous procedural hurdles apply when evicting to move self or relative into property, and substantial relocation fee must be paid to tenant.

Reasons Allowed for Just Cause Evictions	Additional Local Notice Requirements and Limitations
Nonpayment of rent.	Ordinary Three-Day Notice to Pay Rent or Quit is used.
Failure to cure a lease or rental agreement violation within "a reasonable time" after receipt of written notice to cure it.	Three-Day Notice to Perform Covenant or Quit is used. Tenant must be given "a reasonable time" to correct the violation, which precludes an unconditional Three-Day Notice to Quit. Also, the tenant must have been "provided with a written statement of the respective covenants and obligations of both the landlord and tenant" before the violation. Giving the tenant a copy of the written lease or rental agreement should comply with this requirement. This ground is specifically not applicable if the violation is having another person living on the property in violation of the agreement if the person is a "spouse, domestic partner, child, parent, grandparent, brother, or sister" of the tenant. (Tenant, however, is required to notify landlord in writing of this fact and state the person's name and relationship, when that person moves in.)
The tenant's spouse, child, "domestic partner," parent, grandparent, brother, or sister can be evicted if the tenant has left, unless that person lived in the unit for at least a year and the tenant died or became incapacitated.	State law allows eviction for this reason by three-day notice only if the tenant's having moved the other person in was a violation of the lease or rental agreement. Thirty-day notice can be used if tenancy is month to month.
Commission of a legal nuisance (disturbing other residents) or damaging the property.	Unconditional Three-Day Notice to Quit may be used.
Tenant is using the property for illegal purpose.	Unconditional Three-Day Notice to Quit may be used.
Tenant refuses, after written demand by landlord, to agree to new rental agreement or lease on expiration of prior one, if new proposed agreement contains no new or unlawful terms.	This applies only when a lease or rental agreement expires of its own terms. No notice is required under state law. However, tenant must have refused to sign a new one containing the same provisions as the old one; a written notice giving the tenant at least three days to sign the new agreement or leave should be served on the tenant with the proposed new lease or rental agreement.
Tenant continues to refuse the landlord access to the property as required by CC § 1954.	If provision is in lease, three-day notice giving tenant option of letting landlord in or moving. If not, and tenancy is month to month, 30-day notice specifying reason.
Person occupying property is subtenant (other than persons mentioned in 2 and 3 above) not approved by landlord. (No requirement, as in other cities, for lease to have expired.)	Thirty-day notice may be used if tenancy is month to month. Otherwise, Three-Day Notice to Quit may be used if lease or rental agreement contains provision against subletting.
Employment of resident manager, who began tenancy as such (not tenant who was "promoted" from regular tenant to manager) and who lived in manager's unit, has been terminated.	This type of eviction is not covered in this book because the question of what is required is extremely complicated, depending in part on the nature of the management agreement. You should seek legal advice.
Employment of resident manager, who was a regular tenant before "promotion" to manager, has been terminated for cause.	Landlord must give tenant 60-day notice, give copy of notice to city, and pay tenant a relocation fee. There are other restrictions as well. This type of eviction can be extremely complicated; see a lawyer.
Landlord wants to move in, after returning from extended absence, and tenancy was under lease for specific fixed term.	No notice is required under state law when fixed-term lease expires, and ordinance doesn't seem to require notice, either. However, written letter stating intent not to renew, or clear statement in lease, is advisable.

Reasons Allowed for Just Cause Evictions	Additional Local Notice Requirements and Limitations
Landlord wants to move self, parent, grandparent, child, brother, or sister into property, and no comparable vacant unit exists in the property.	Tenant must be given 90-day notice that states the name, relationship, and address of person to be moved in, and a copy of the notice must be sent to the Rent Commission. Landlord must also pay tenant(s) of 15 months or more a "relocation fee," depending on size of unit: Bachelor apartment, $5,100; one-bedroom apartment, $7,200; two-bedroom apartment, $9,700; three-bedroom apartment or larger, $12,800. (§ 17.52.020.). Tenant is liable for repayment of the fee if he has not moved at the end of the 90-day period. Person moved in must live in property for at least one year, or bad faith is presumed and tenant may more easily sue landlord for wrongful eviction. Not allowed if tenant is certified by physician as terminally ill.
Landlord wants to make substantial repairs to bring property into compliance with health codes, and repairs not possible while tenant remains.	Under state law, eviction for this reason is allowed only if rental agreement is month to month. Landlord must first obtain all permits required for remodeling. Thirty-day notice giving specific reason must be used.
Landlord has taken title to single-family residence or condominium unit by foreclosure. Person moved in must live in property for at least one year, or bad faith is presumed and tenant may more easily sue landlord for wrongful eviction.	Tenant must be given 90-day notice that states the name, relationship, and address of person to be moved in, and a copy of the notice must be sent to the Rent Commission. Landlord must also pay tenant(s) of 15 months or more a "relocation fee," depending on size of unit: Bachelor apartment, $5,100; one-bedroom apartment, $7,200; two-bedroom apartment, $9,700; three-bedroom apartment or larger, $12,800. (§ 17.52.020.). Tenant is liable for repayment of the fee if he has not moved at the end of the 90-day period. Not allowed if tenant is certified by physician as terminally ill. (Vacancy decontrol provisions are not applicable if property is rerented following eviction.)

Westlake Village

This small city (population 10,000) has a rent control ordinance that applies to apartment complexes of five units or more (as well as to mobile home parks, whose specialized laws are not covered in this book). However, the city never had more than one apartment complex of this size, and that one was converted to condominiums. Since there is therefore now no property (other than mobile home parks) to which the ordinance applies, we don't explain the ordinance here.

APPENDIX

B

How to Use the Interactive Forms on the Nolo Website

This book comes with eforms that you can access online at **www.nolo.com/back-of-book/CTEN.html**

To use the files, your computer must have specific software programs installed. Here is a list of types of files provided by this book, as well as the software programs you'll need to access them.

- **RTF.** You can open, edit, save, and print these form files with most word processing programs such as Microsoft *Word*, Windows *WordPad*, and recent versions of *WordPerfect*.
- **PDF.** You can view these files with Adobe *Reader*, free software from www.adobe.com. Judicial Council PDFs are fillable using your computer.

Editing RTFs

Here are some general instructions about editing RTF forms in your word processing program. Refer to the book's instructions and sample agreements for help about what should go in each blank.

- **Underlines.** Underlines indicate where to enter information. After filling in the needed text, delete the underline. In most word processing programs you can do this by highlighting the underlined portion and typing CTRL-U.
- **Bracketed and italicized text.** Bracketed and italicized text indicates instructions. Be sure to remove all instructional text before you finalize your document.
- **Optional text.** Optional text gives you the choice to include or exclude text. Delete any optional text you don't want to use. Renumber numbered items, if necessary.
- **Alternative text.** Alternative text gives you the choice between two or more text options. Delete those options you don't want to use. Renumber numbered items, if necessary.
- **Signature lines.** Signature lines should appear on a page with at least some text from the document itself.

Every word processing program uses different commands to open, format, save, and print documents, so refer to your software's help documents for help using your program. Nolo cannot provide technical support for questions about how to use your computer or your software.

CAUTION

In accordance with U.S. copyright laws, the forms provided by this book are for your personal use only.

List of Forms Available on the Nolo Website

To download any of the files listed on the following pages go to:
www.nolo.com/back-of-book/CTEN.html

The following files are in rtf format:

Form Name	File Name
Landlord-Tenant Checklist	Checklist.rtf
Fixed-Term Residential Lease	FixedLease.rtf
Month-to-Month Residential Rental Agreement	RentalAgreement.rtf
Notice to Repair	NoticetoRepair.rtf
Notice of Rent Withholding	RentWithholding.rtf
Agreement Regarding Tenant Alterations to Rental Unit	Alteration.rtf
Blank Numbered Legal Paper	BlankLegal.rtf
Blank Numbered Legal Paper With Superior Court Heading	LegalSuperior.rtf
Demurrer	Demurrer.rtf
Points and Authorities in Support of Demurrer	Points.rtf
Notice of Hearing on Demurrer	NoticeofHearing.rtf
Request for Judicial Notice	RequestNotice.rtf
Request to Inspect and for Production of Documents	RequestInspect.rtf
Settlement Agreement	Settlement.rtf

Form Name	File Name
Demand for Jury Trial	DemandJury.rtf
Application and Declaration for Relief From Eviction	AppEviction.rtf
Order Granting Relief From Eviction	OrderReliefEviction.rtf
Application and Declaration for Stay of Eviction	StayEviction.rtf
Notice of Motion and Points and Authorities for Relief from Eviction	NoticeReliefEviction.rtf
Order Granting Stay of Eviction	OrderEviction.rtf
Notice of Appeal and Notice to Prepare Clerk's Transcript	ClerkTranscript.rtf

The following files are in pdf format:

Form Name	File Name
Request to Waive Court Fees* (a Judicial Council form)	fw001.pdf
Order on Court Fee Waiver (Superior Court)* (a Judicial Council form)	fw003.pdf
Prejudgment Claim of Right to Possession* (a Judicial Council form)	cp105.pdf
Proof of Service by First-Class Mail—Civil (a Judicial Council form)	pos030.pdf
Attachment to Proof of Service by First-Class Mail—Civil (Persons Served) (a Judicial Council form)	pos030p.pdf
Answer–Unlawful Detainer* (a Judicial Council form)	hd105.pdf
Attachment	mc025.pdf
Form Interrogatories–Unlawful Detainer* (a Judicial Council form)	disc003.pdf
Claim of Right to Possession and Notice of Hearing* (a Judicial Council form)	cp10f.pdf

* Be sure that the back of the forms you submit to the court are printed upside-down.

The following files are sample forms and letters in pdf format:

Form Name	File Name
Landlord-Tenant Agreement Regarding Tenant's Credit Information	CreditInfo.pdf
Sample Addendum to Lease or Rental Agreement	SampleAddendum.pdf
Sample Agreement Between Roommates	Roommates.pdf
Sample Letter When a New Roommate Moves In	NewRoommate.pdf
Sample Letter When One Tenant Moves Out and the Other Remains (Lease)	MoveOutLease.pdf
Sample Letter When One Tenant Moves Out and the Other Remains (Rental Agreement)	MoveOutRenAgree.pdf
Sample Agreement for Partial Rent Payments	PartialPayments.pdf
Sample Letter When Landlord Violates Privacy	ViolatesPrivacy.pdf
Sample Request for Repair or Maintenance	RepairRequest.pdf
Sample Letter of Understanding Regarding Repairs	UnderstandRepairs.pdf
Sample Letter Telling the Landlord You Intend to Withhold the Rent	WithholdRent.pdf
Sample Letter Telling the Landlord You Intend to Repair and Deduct	RepairDeduct.pdf
Sample Letter Asking for Minor Repairs	MinorRepairs.pdf
Sample Letter Requesting Permission to Do a Minor Repair	PermissionRepair.pdf
Sample Letter to Landlord Regarding Tenant Injury	TenantInjury.pdf

Form Name	File Name
Sample Letter Regarding Deteriorating Asbestos	Asbestos.pdf
Sample Letter Requesting Reimbursement for Temporary Housing	TempHousing.pdf
Sample Letter Regarding Lead Test Results	LeadTest.pdf
Sample Letter Asking for Check of CO Detector	CODetector.pdf
Sample Letter Alerting the Landlord to Dangerous Conditions	DangerousCond.pdf
Sample Sublease Agreement	Sublease.pdf
Sample Agreement Regarding Cancellation of Lease	LeaseCancel.pdf
Sample Letter to Landlord Suggesting Potential Tenants	PotentialTenants.pdf
Sample Letter Demanding Security Deposit	SecDeposit.pdf
Sample Letter Requesting Landlord to Apply Deposit to Last Month's Rent	LastMonthRent.pdf

Using California Judicial Council Government Forms

The Nolo website includes several government forms that were created by the Judicial Council, California's official forms publisher. The list of forms at the beginning of this appendix notes the ten or so forms which are Judicial Council forms. These forms are in Adobe Acrobat PDF format, so to use them, you need Adobe *Reader* installed on your computer (available free at www.adobe.com).

In addition to being available on the Nolo website, the Judicial Council forms are available at www.courts.ca.gov/forms.htm. To find a specific Judicial Council form on the Council's website, just search for the name of the form and the form number. The Judicial Council forms will have the words Judicial Council of California in the bottom left-hand corner of the form and revision date, and will have a form number in the upper right; for example, the Answer–Unlawful Detainer is Judicial Council form UD-105.

You may find it easiest to complete a Judicial Council form on the Council's website. (Because the Judicial Council revises forms from time to time, you can make sure you have the most current form available.) If you want to download a form from the Judicial Council site that you will complete online, consult the useful information on filling out one of the official court forms in the "Using Judicial Council forms" section at www.courts.ca.gov/selfhelp-forms.htm.

Some of you may prefer to download the relevant forms (Nolo or Judicial Council forms), complete them online, and then print. If you're old school and prefer to use a typewriter, you may type in the required information in any of the forms in this book. Courts are required to accept forms that are filled in by hand.

APPENDIX

C

Forms

Form	Discussed in Chapter
Landlord-Tenant Checklist	Chapter 1
Fixed-Term Residential Lease	Chapter 1
Month-to-Month Residential Rental Agreement	Chapter 1
Notice to Repair	Chapter 6
Notice of Rent Withholding	Chapter 6
Agreement Regarding Tenant Alterations to Rental Unit	Chapter 8
Request to Waive Court Fees* (a Judicial Council form)	Chapter 15
Order on Court Fee Waiver (Superior Court)* (a Judicial Council form)	Chapter 15
Prejudgment Claim of Right to Possession* (a Judicial Council form)	Chapter 15
Blank Numbered Legal Paper	Chapter 15
Blank Numbered Legal Paper With Superior Court Heading	Chapter 15
Proof of Service by First-Class Mail—Civil (a Judicial Council form)	Chapter 15
Attachment to Proof of Service by First-Class Mail—Civil (Persons Served) (a Judicial Council form)	Chapter 15
Demurrer	Chapter 15
Points and Authorities in Support of Demurrer	Chapter 15
Notice of Hearing on Demurrer	Chapter 15
Request for Judicial Notice	Chapter 15
Answer—Unlawful Detainer* (a Judicial Council form)	Chapter 15
Attachment	Chapter 15
Request to Inspect and for Production of Documents	Chapter 15
Form Interrogatories—Unlawful Detainer* (a Judicial Council form)	Chapter 15
Settlement Agreement	Chapter 15
Demand for Jury Trial	Chapter 15
Application and Declaration for Relief From Eviction	Chapter 15
Notice of Motion and Points and Authorities for Relief From Eviction	Chapter 15
Order Granting Relief From Eviction	Chapter 15
Application and Declaration for Stay of Eviction	Chapter 15
Order Granting Stay of Eviction	Chapter 15
Notice of Appeal and Notice to Prepare Clerk's Transcript	Chapter 15
Claim of Right to Possession and Notice of Hearing* (a Judicial Council form)	Chapter 15

* Be sure that the back of the forms you submit to the court are printed upside-down.

Landlord/Tenant Checklist

General Condition of Rental Unit and Premises

Street Address _____ Unit _____ City _____

	Condition on Arrival	Condition on Initial Move-Out Inspection	Condition on Departure	Actual or Estimated Cost of Cleaning, Repair/Replacement
Living Room				
Floors & Floor Coverings				
Drapes & Window Coverings				
Walls & Ceilings				
Light Fixtures				
Windows, Screens, & Doors				
Front Door & Locks				
Smoke Detector				
Fireplace				
Other				
Kitchen				
Floors & Floor Coverings				
Walls & Ceilings				
Light Fixtures				
Cabinets				
Counters				
Stove/Oven				
Refrigerator				
Dishwasher				
Garbage Disposal				
Sink & Plumbing				
Smoke Detector				
Other				

	Condition on Arrival	Condition on Initial Move-Out Inspection	Condition on Departure	Actual or Estimated Cost of Cleaning, Repair/Replacement
Dining Room				
Floors & Floor Coverings				
Walls & Ceilings				
Light Fixtures				
Windows, Screens, & Doors				
Smoke Detector				
Other				
Bathroom				
Floors & Floor Coverings				
Walls & Ceilings				
Windows, Screens, & Doors				
Light Fixtures				
Bathtub/Shower				
Sinks & Counters				
Toilet				
Other				
Other				
Bedroom				
Floors & Floor Coverings				
Windows, Screens, & Doors				
Walls & Ceilings				
Light Fixtures				
Smoke Detector				
Other				
Other				
Other				

	Condition on Arrival	Condition on Initial Move-Out Inspection	Condition on Departure	Actual or Estimated Cost of Cleaning, Repair/Replacement
Other Areas				
Heating System				
Air Conditioning				
Lawn/Garden				
Stairs & Hallway				
Patio,Terrace, Deck, etc.				
Basement				
Parking Area				
Other				
Other				
Other				
Other				
Other				

☐ Tenants acknowledge that all smoke detectors and fire extinguishers were tested in their presence and found to be in working order, and that the testing procedure was explained to them. Tenants agree to test all detectors at least once a month and to report any problems to Landlord/Manager in writing. Tenants agree to replace all smoke detector batteries as necessary.

Notes: _____

Furnished Property

	Condition on Arrival	Condition on Initial Move-Out Inspection	Condition on Departure	Actual or Estimated Cost of Cleaning, Repair/Replacement
Living Room				
Coffee Table				
End Tables				
Lamps				
Chairs				
Sofa				
Other				
Other				
Kitchen				
Broiler Pan				
Ice Trays				
Other				
Other				
Dining Area				
Chairs				
Stools				
Table				
Other				
Other				
Bathroom				
Mirrors				
Shower Curtain				
Hamper				
Other				

	Condition on Arrival	Condition on Initial Move-Out Inspection	Condition on Departure	Actual or Estimated Cost of Cleaning, Repair/Replacement
Bedroom				
Beds (single)				
Beds (double)				
Chairs				
Chests				
Dressing Tables				
Lamps				
Mirrors				
Night Tables				
Other				
Other				
Other Area				
Bookcases				
Desks				
Pictures				
Other				
Other				

Use this space to provide any additional explanation:

Landlord/Tenant Checklist completed on moving in on _____, 20 _____.

_____ and _____
Landlord/Manager Tenant

_____
Tenant

_____
Tenant

Landlord/Tenant Checklist completed at Initial Move-Out Inspection on _____, 20 _____.

_____ and _____
Landlord/Manager Tenant

_____
Tenant

_____
Tenant

Landlord/Tenant Checklist completed on moving out on _____, 20 _____.

_____ and _____
Landlord/Manager Tenant

_____
Tenant

_____
Tenant

Fixed-Term Residential Lease

1. **Identification of Landlord and Tenants.** This Agreement is made and entered into on _____ , 20_____ , between _____("Tenants") and _____ ("Landlord"). Each Tenant is jointly and severally liable for the payment of rent and performance of all other terms of this Agreement.

2. **Identification of Premises and Occupants.** Subject to the terms and conditions set forth in this Agreement, Landlord rents to Tenants, and Tenants rent from Landlord, for residential purposes only, the premises located at _____ _____ , California ("the premises"). The premises will be occupied by the undersigned Tenants and the following minor children: _____ _____ _____ .

3. **Limits on Use and Occupancy.** The premises are to be used only as a private residence for Tenants and any minors listed in Clause 2 of this Agreement, and for no other purpose without Landlord's prior written consent. Occupancy by guests for more than ten days in any six-month period is prohibited without Landlord's written consent and will be considered a breach of this Agreement.

4. **Defining the Term of the Tenancy.** The term of the rental will begin on _____ , 20____ and will expire on _____ , 20_____ . Should Tenants vacate before expiration of the term, Tenants will be liable for the balance of the rent for the remainder of the term, less any rent Landlord collects or could have collected from a replacement tenant by reasonably attempting to rerent. Tenants who vacate before expiration of the term are also responsible for Landlord's costs of advertising for a replacement tenant.

5. **Amount and Schedule for the Payment of Rent.** Tenants will pay to Landlord a monthly rent of $ _____ , payable in advance on the _____ day of each month, except when that day falls on a weekend or legal holiday, in which case rent is due on the next business day. Rent will be paid to _____ _____ at _____ _____ , or at such other place as Landlord may designate.

   ☐ a. The form of payment will be ☐ cash ☐ personal check ☐ certified funds or money order ☐ credit card ☐ bank debit ☐ automatic credit card debit

   ☐ b. [*Check if rent will be accepted personally, not by mail.*] Rent is accepted during the following days and hours: _____ _____

   ☐ c. [*Check if rent will be paid by electronic funds transfer.*] Rent may be paid by electronic funds transfer to account number _____ in the name of _____ at _____ (*institution*), _____ (*branch*), a financial institution located at _____ (*bank address*), and and can reached at _____ (*telephone number*).

   ☐ d. [*Prorated rent.*] On signing this agreement, Tenants will pay to Landlord for the period of _____ , 20_____ , through _____ , 20_____ , the sum of $ _____ as rent, payable in advance.

6. **Late Charges.** Because Landlord and Tenants agree that actual damages for late rent payments are very difficult or impossible to determine, Landlord and Tenants agree to the following stated late charge as liquidated damages. Tenants will pay Landlord a late charge if Tenants fail to pay the rent in full within _____ days after the date it is due. The late charge will be $_____ , plus $_____ for each additional day that the rent continues to be unpaid. The total late charge for any one month will not exceed $_____ . Landlord does not waive the right to insist on payment of the rent in full on the date it is due.

7. **Returned Check and Other Bank Charges.** In the event any check offered by Tenants to Landlord in payment of rent or any other amount due under this Agreement is returned for lack of sufficient funds, a "stop payment," or any other reason, Tenants will pay Landlord a returned check charge as follows: $25 for the first returned check, and $35 for subsequent returned checks.

8. **Amount and Payment of Deposits.** On signing this Agreement, Tenants will pay to Landlord the sum of $_____ as a security deposit. Tenants may not, without Landlord's prior written consent, apply this security deposit to the last month's rent or to any other sum due under this Agreement. Within three weeks after Tenants have vacated the premises, Landlord will furnish Tenants with an itemized written statement of the reasons for, and the dollar amount of, any of the security deposit retained by the Landlord, receipts for work done or items purchased, if available, along with a check for any deposit balance. Under Section 1950.5 of the California Civil Code, Landlord may withhold only that portion of Tenants' security deposit necessary to: (1) remedy any default by Tenants in the payment of rent; (2) repair damages to the premises exclusive of ordinary wear and tear; (3) clean the premises if necessary to restore it to the same level of cleanliness it was in at the beginning of the tenancy; and (4) remedy any default by tenants, under this Agreement, to restore, replace, or return any of Landlord's personal property mentioned in this Agreement, including but not limited to the property referred to in Clause 11.

   Landlord will pay Tenants interest on all security deposits as follows:

   ☐ a. Per state law, no interest payments are required.

   ☐ b. Local law requires that interest be paid or credited, or Landlord has decided voluntarily to do so, which will occur as follows: _____
   _____
   _____.

9. **Utilities.** Tenants will be responsible for payment of all utility charges, except for the following, which shall be paid by Landlord:
   _____
   _____
   _____.

   ☐ Tenants' gas or electric meter serves area(s) outside of their premises, and there are not separate gas and electric meters for Tenants' unit and the area(s) outside their unit. Tenants and Landlord agree as follows: _____
   _____
   _____.

10. **Prohibition of Assignment and Subletting.** Tenants will not sublet any part of the premises or assign this Agreement without the prior written consent of Landlord.

11. **Condition of the Premises.** Tenants agree to: (1) keep the premises clean and sanitary and in good repair and, upon termination of the tenancy, to return the premises to Landlord in a condition identical to that which existed when Tenants took occupancy, except for ordinary wear and tear; (2) immediately notify Landlord of any defects or dangerous conditions in and about the premises of which they become aware; and (3) reimburse Landlord, on demand by Landlord, for the cost of any repairs to the premises, including Landlord's personal property therein, damaged by Tenants or their guests or invitees through misuse or neglect.

    Tenants acknowledge that they have examined the premises, including appliances, fixtures, carpets, drapes, and paint, and have found them to be in good, safe, and clean condition and repair, except as noted here: _____
    _____
    _____
    _____
    _____
    _____.

12. **Possession of the Premises.** If, after signing this Agreement, Tenants fail to take possession of the premises, they will be responsible for paying rent and complying with all other terms of this Agreement. In the event Landlord is unable to deliver possession of the premises to Tenants for any reason not within Landlord's control, including, but not limited to, failure of prior occupants to vacate or partial or complete destruction of the premises, Tenants will have the right to terminate this Agreement. In such event, Landlord's liability to Tenants will be limited to the return of all sums previously paid by Tenants to Landlord.

13. **Pets.** No animal may be kept on the premises without Landlord's prior written consent, except animals needed by tenants who have a disability, as that term is understood by law, and: _____ _____, under the following conditions: _____.

14. **Landlord's Access for Inspection and Emergency.** Landlord or Landlord's agents may enter the premises, with or without Tenant's presence, to make necessary or agreed repairs, alterations, decorations, or improvements; to supply necessary or agreed services; to inspect for waterbed violations; to show the premises to prospective or actual buyers, mortgagees, tenants, workers, or contractors; to conduct an initial move-out inspection as provided by California Civil Code Section 1950.5(f); and pursuant to court order or agreement with Tenant. Landlord will give Tenant reasonable notice of intent to enter (at least 24 hours' notice) and will enter only during regular business hours. When entry is for the purpose of an initial move-out inspection, the notice period will be 48 hours. Notices will include the purpose, date, and approximate time of the intended entry. Landlord may enter without notice and at any time in case of emergency or when Tenant has abandoned or surrendered the premises.

15. **Extended Absences by Tenants.** Tenants agree to notify Landlord in the event that they will be away from the premises for _____ consecutive days or more. During such absence, Landlord may enter the premises at times reasonably necessary to maintain the property and inspect for damage and needed repairs.

16. **Prohibitions Against Violating Laws and Causing Disturbances.** Tenants are entitled to quiet enjoyment of the premises. Tenants and their guests or invitees will not use the premises or adjacent areas in such a way as to: (1) violate any law or ordinance, including laws prohibiting the use, possession, or sale of illegal drugs; (2) commit waste or nuisance; or (3) annoy, disturb, inconvenience, or interfere with the quiet enjoyment and peace and quiet of any other tenant or nearby resident.

17. **Repairs and Alterations**
    a. Tenants will not, without Landlord's prior written consent, alter, rekey, or install any locks to the premises or install or alter any burglar alarm system. Tenants will provide Landlord with a key or keys capable of unlocking all such rekeyed or new locks as well as instructions on how to disarm any altered or new burglar alarm system.
    b. Except as provided by law or as authorized by the prior written consent of Landlord, Tenants will not make any repairs or alterations to the premises. Landlord will not unreasonably withhold consent for such repairs, but will not authorize repairs that require advanced skill or workmanship or that would be dangerous to undertake. Landlord will not authorize repairs unless such repairs are likely to return the item or element of the rental to its predamaged state of usefulness and attractiveness.

18. **Damage to the Premises.** In the event the premises are partially or totally damaged or destroyed by fire or other cause, the following will apply:
    a. If the premises are totally damaged and destroyed, Landlord will have the option to: (1) repair such damage and restore the premises, with this Agreement continuing in full force and effect, except that Tenants' rent will be abated while repairs are being made; or (2) give written notice to Tenants terminating this Agreement at any time within thirty (30) days after such damage, and specifying the termination date; in the event that Landlord gives such notice, this Agreement will expire and all of Tenants' rights pursuant to this Agreement will cease.
    b. Landlord will have the option to determine that the premises are only partially damaged by fire or other cause. In that event, Landlord will attempt to repair such damage and restore the premises within thirty (30) days after such damage. If only part of the premises cannot be used, Tenants must pay rent only for the usable part, to be determined solely by Landlord. If Landlord is unable to complete repairs within thirty (30) days, this Agreement will expire and all of Tenants' rights pursuant to this Agreement will terminate at the option of either party.

c. In the event that Tenants, or their guests or invitees, in any way caused or contributed to the damage of the premises, Landlord will have the right to terminate this Agreement at any time, and Tenants will be responsible for all losses, including, but not limited to, damage and repair costs as well as loss of rental income.

d. Landlord will not be required to repair or replace any property brought onto the premises by Tenants.

19. Tenants' Financial Responsibility and Renters' Insurance. Tenants agree to accept financial responsibility for any loss or damage to personal property belonging to Tenants and their guests and invitees caused by theft, fire, or any other cause. Landlord assumes no liability for any such loss. Landlord recommends that Tenants obtain a renters' insurance policy from a recognized insurance firm to cover Tenants' liability, personal property damage, and damage to the premises.

20. Waterbeds. No waterbed or other item of water-filled furniture may be kept on the premises without Landlord's written consent.

☐ Landlord grants Tenants permission to keep water-filled furniture on the premises. Attachment _____ : Agreement Regarding Use of Waterbed is attached to and incorporated into this Agreement by reference.

21. Tenant Rules and Regulations

☐ Tenant acknowledges receipt of, and has read a copy of, Landlord's rules and regulations, which are attached to and incorporated into this agreement by reference (Attachment _____). Tenant understands that serious or repeated violations of the rules may be grounds for termination. Landlord may change the rules and regulations without notice.

22. Payment of Attorney Fees in a Lawsuit. In any action or legal proceeding to enforce any part of this Agreement, the prevailing party ☐ will not / ☐ will recover reasonable attorney fees and court costs.

23. Authority to Receive Legal Papers. Any person managing the premises, the Landlord, and anyone designated by the Landlord are authorized to accept service of process and receive other notices and demands, which may be delivered to:

☐ a. the manager, at the following address and telephone number: _____

_____

_____

☐ b. the Landlord, at the following address and telephone number: _____

_____

_____

☐ c. the following: _____

_____

_____

_____

_____

24. Cash-Only Rent. Tenants will pay rent in the form specified above in Clause 5a. Tenants understand that if Tenants pay rent with a check that is not honored due to insufficient funds, or with a money order or cashier's check whose issuer has been instructed to stop payment, Landlord has the legal right to demand that rent be paid only in cash for up to three months after Tenants have received proper notice. (California Civil Code § 1947.3.) In that event, Landlord will give Tenants the legally required notice, and Tenants agree to abide by this change in the terms of this tenancy.

25. Additional Provisions

☐ a. None

☐ b. Additional provisions are as follows: _____

_____

_____ .

26. **State Database Disclosure.** Notice: Pursuant to Section 290.46 of the Penal Code, information about specified registered sex offenders is made available to the public via an Internet website maintained by the Department of Justice at www.meganslaw.ca.gov. Depending on an offender's criminal history, this information will include either the address at which the offender resides or the community of residence and ZIP Code in which he or she resides.

27. **Lead-Based Paint and Other Disclosures.** Tenant acknowledges that Landlord has made the following disclosures regarding the premises:

☐ Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards

☐ Other disclosures: _____

_____

_____.

28. **Grounds for Termination of Tenancy.** The failure of Tenants or Tenants' guests or invitees to comply with any term of this Agreement, or the misrepresentation of any material fact on Tenants' Rental Application, is grounds for termination of the tenancy, with appropriate notice to Tenants and procedures as required by law.

29. **Entire Agreement.** This document constitutes the entire Agreement between the parties, and no promises or representations, other than those contained here and those implied by law, have been made by Landlord or Tenants. Any modifications to this Agreement must be in writing signed by Landlord and Tenants.

_____ _____

Landlord/Manager Date

_____

Landlord/Manager's Street Address, City, State, & Zip

_____

_____ _____

Tenant Date

_____ _____

Tenant Date

_____ _____

Tenant Date

Month-to-Month Residential Rental Agreement

1. **Identification of Landlord and Tenants.** This Agreement is made and entered into on _____ , 20_____ , between _____("Tenants") and _____ ("Landlord"). Each Tenant is jointly and severally liable for the payment of rent and performance of all other terms of this Agreement.

2. **Identification of Premises and Occupants.** Subject to the terms and conditions set forth in this Agreement, Landlord rents to Tenants, and Tenants rent from Landlord, for residential purposes only, the premises located at _____ _____ , California ("the premises"). The premises will be occupied by the undersigned Tenants and the following minor children: _____ _____ _____ .

3. **Limits on Use and Occupancy.** The premises are to be used only as a private residence for Tenants and any minors listed in Clause 2 of this Agreement, and for no other purpose without Landlord's prior written consent. Occupancy by guests for more than ten days in any six-month period is prohibited without Landlord's written consent and will be considered a breach of this Agreement.

4. **Defining the Term of the Tenancy.** The rental will begin on _____ , 20_____ , and will continue on a month-to-month basis. This tenancy may be terminated by Landlord or Tenants and may be modified by Landlord, by giving 30 days' written notice to the other, or 60 days' notice by Landlord to Tenant, in accordance with Civil Code Section 827 or 1946.1 (subject to any local rent control ordinances that may apply).

5. **Amount and Schedule for the Payment of Rent.** Tenants will pay to Landlord a monthly rent of $ _____ , payable in advance on the _____ day of each month, except when that day falls on a weekend or legal holiday, in which case rent is due on the next business day. Rent will be paid to _____ _____ at _____ _____ , or at such other place as Landlord may designate.

   ☐ a. The form of payment will be ☐ cash ☐ personal check ☐ certified funds or money order ☐ credit card ☐ bank debit ☐ automatic credit card debit

   ☐ b. [*Check if rent will be accepted personally, not by mail.*] Rent is accepted during the following days and hours: _____ _____

   ☐ c. [*Check if rent will be paid by electronic funds transfer.*] Rent may be paid by electronic funds transfer to account number _____ in the name of _____ at _____ (*institution*), _____ (*branch*), a financial institution located at _____ (*bank address*), and and can reached at _____ (*telephone number*).

   ☐ d. [*Prorated rent.*] On signing this agreement, Tenants will pay to Landlord for the period of _____ , 20_____ , through _____ , 20_____ , the sum of $ _____ as rent, payable in advance.

6. **Late Charges.** Because Landlord and Tenants agree that actual damages for late rent payments are very difficult or impossible to determine, Landlord and Tenants agree to the following stated late charge as liquidated damages. Tenants will pay Landlord a late charge if Tenants fail to pay the rent in full within _____ days after the date it is due. The late charge will be $_____ , plus $_____ for each additional day that the rent continues to be unpaid. The total late charge for any one month will not exceed $_____ . Landlord does not waive the right to insist on payment of the rent in full on the date it is due.

7. **Returned Check and Other Bank Charges.** In the event any check offered by Tenants to Landlord in payment of rent or any other amount due under this Agreement is returned for lack of sufficient funds, a "stop payment," or any other reason, Tenants will pay Landlord a returned check charge as follows: $25 for the first returned check, and $35 for subsequent returned checks.

8. **Amount and Payment of Deposits.** On signing this Agreement, Tenants will pay to Landlord the sum of $_____ as a security deposit. Tenants may not, without Landlord's prior written consent, apply this security deposit to the last month's rent or to any other sum due under this Agreement. Within three weeks after Tenants have vacated the premises, Landlord will furnish Tenants with an itemized written statement of the reasons for, and the dollar amount of, any of the security deposit retained by the Landlord, along with a check for any deposit balance. Under Section 1950.5 of the California Civil Code, Landlord may withhold only that portion of Tenants' security deposit necessary to: (1) remedy any default by Tenants in the payment of rent; (2) repair damages to the premises exclusive of ordinary wear and tear; (3) clean the premises if necessary to restore it to the same level of cleanliness it was in at the beginning of the tenancy; and (4) remedy any default by tenants, under this Agreement, to restore, replace, or return any of Landlord's personal property mentioned in this Agreement, including but not limited to the property referred to in Clause 11.

   Landlord will pay Tenants interest on all security deposits as follows:

   ☐ a. Per state law, no interest payments are required.

   ☐ b. Local law requires that interest be paid or credited, which will occur as follows: _____
   _____
   _____.

9. **Utilities.** Tenants will be responsible for payment of all utility charges, except for the following, which shall be paid by Landlord: _____
   _____
   _____.

   ☐ Tenants' gas or electric meter serves area(s) outside of their premises, and there are not separate gas and electric meters for Tenants' unit and the area(s) outside their unit. Tenants and Landlord agree as follows: _____
   _____
   _____.

10. **Prohibition of Assignment and Subletting.** Tenants will not sublet any part of the premises or assign this Agreement without the prior written consent of Landlord. Neither shall Tenants sublet or rent any part of the premises for short-term stays of any duration, including but not limited to vacation rentals.

11. **Condition of the Premises.** Tenants agree to: (1) keep the premises clean and sanitary and in good repair and, upon termination of the tenancy, to return the premises to Landlord in a condition identical to that which existed when Tenants took occupancy, except for ordinary wear and tear; (2) immediately notify Landlord of any defects or dangerous conditions in and about the premises of which they become aware; and (3) reimburse Landlord, on demand by Landlord, for the cost of any repairs to the premises, including Landlord's personal property therein, damaged by Tenants or their guests or invitees through misuse or neglect.

    Tenants acknowledge that they have examined the premises, including appliances, fixtures, carpets, drapes, and paint, and have found them to be in good, safe, and clean condition and repair, except as noted here: _____
    _____
    _____
    _____
    _____
    _____
    _____.

12. **Possession of the Premises.** If, after signing this Agreement, Tenants fail to take possession of the premises, they will be responsible for paying rent and complying with all other terms of this Agreement. In the event Landlord is unable to deliver possession of the premises to Tenants for any reason not within Landlord's control, including, but not limited to, failure of prior occupants to vacate or partial or complete destruction of the premises, Tenants will have the right to terminate this Agreement. In such event, Landlord's liability to Tenants will be limited to the return of all sums previously paid by Tenants to Landlord.

13. **Pets.** No animal may be kept on the premises without Landlord's prior written consent, except animals needed by tenants who have a disability, as that term is understood by law, and: _____, _____ under the following conditions: _____.

14. **Landlord's Access for Inspection and Emergency.** Landlord or Landlord's agents may enter the premises, with or without Tenant's presence, to make necessary or agreed repairs, alterations, decorations, or improvements; to supply necessary or agreed services; to inspect for waterbed violations; to show the premises to prospective or actual buyers, mortgagees, tenants, workers, or contractors; to conduct an initial move-out inspection as provided by California Civil Code Section 1950.5(f); and pursuant to court order or agreement with Tenant. Landlord will give Tenant reasonable notice of intent to enter (at least 24 hours' notice) and will enter only during regular business hours. When entry is for the purpose of an initial move-out inspection, the notice period will be 48 hours. Notices will include the purpose, date, and approximate time of the intended entry. Landlord may enter without notice and at any time in case of emergency or when Tenant has abandoned or surrendered the premises.

15. **Extended Absences by Tenants.** Tenants agree to notify Landlord in the event that they will be away from the premises for _____ consecutive days or more. During such absence, Landlord may enter the premises at times reasonably necessary to maintain the property and inspect for damage and needed repairs.

16. **Prohibitions Against Violating Laws and Causing Disturbances.** Tenants are entitled to quiet enjoyment of the premises. Tenants and their guests or invitees will not use the premises or adjacent areas in such a way as to: (1) violate any law or ordinance, including laws prohibiting the use, possession, or sale of illegal drugs; (2) commit waste or nuisance; or (3) annoy, disturb, inconvenience, or interfere with the quiet enjoyment and peace and quiet of any other tenant or nearby resident.

17. **Repairs and Alterations**
    a. Tenants will not, without Landlord's prior written consent, alter, rekey, or install any locks to the premises or install or alter any burglar alarm system. Tenants will provide Landlord with a key or keys capable of unlocking all such rekeyed or new locks as well as instructions on how to disarm any altered or new burglar alarm system.
    b. Except as provided by law or as authorized by the prior written consent of Landlord, Tenants will not make any repairs or alterations to the premises. Landlord will not unreasonably withhold consent for such repairs, but will not authorize repairs that require advanced skill or workmanship or that would be dangerous to undertake. Landlord will not authorize repairs unless such repairs are likely to return the item or element of the rental to its predamaged state of usefulness and attractiveness.

18. **Damage to the Premises.** In the event the premises are partially or totally damaged or destroyed by fire or other cause, the following will apply:
    a. If the premises are totally damaged and destroyed, Landlord will have the option to: (1) repair such damage and restore the premises, with this Agreement continuing in full force and effect, except that Tenants' rent will be abated while repairs are being made; or (2) give written notice to Tenants terminating this Agreement at any time within thirty (30) days after such damage, and specifying the termination date; in the event that Landlord gives such notice, this Agreement will expire and all of Tenants' rights pursuant to this Agreement will cease.
    b. Landlord will have the option to determine that the premises are only partially damaged by fire or other cause. In that event, Landlord will attempt to repair such damage and restore the premises within thirty (30) days after such damage. If only part of the premises cannot be used, Tenants must pay rent only for the usable part, to be determined solely by Landlord. If Landlord is unable to complete repairs within thirty (30) days, this Agreement will expire and all of Tenants' rights pursuant to this Agreement will terminate at the option of either party.

c. In the event that Tenants, or their guests or invitees, in any way caused or contributed to the damage of the premises, Landlord will have the right to terminate this Agreement at any time, and Tenants will be responsible for all losses, including, but not limited to, damage and repair costs as well as loss of rental income.

d. Landlord will not be required to repair or replace any property brought onto the premises by Tenants.

19. Tenants' Financial Responsibility and Renters' Insurance. Tenants agree to accept financial responsibility for any loss or damage to personal property belonging to Tenants and their guests and invitees caused by theft, fire, or any other cause. Landlord assumes no liability for any such loss. Landlord recommends that Tenants obtain a renters' insurance policy from a recognized insurance firm to cover Tenants' liability, personal property damage, and damage to the premises.

20. Waterbeds. No waterbed or other item of water-filled furniture may be kept on the premises without Landlord's written consent.

☐ Landlord grants Tenants permission to keep water-filled furniture on the premises. Attachment _____ : Agreement Regarding Use of Waterbed is attached to and incorporated into this Agreement by reference.

21. Tenant Rules and Regulations

☐ Tenant acknowledges receipt of, and has read a copy of, Landlord's rules and regulations, which are attached to and incorporated into this agreement by reference (Attachment _____). Tenant understands that serious or repeated violations of the rules may be grounds for termination. Landlord may change the rules and regulations without notice.

22. Payment of Attorney Fees in a Lawsuit. In any action or legal proceeding to enforce any part of this Agreement, the prevailing party ☐ will not / ☐ will recover reasonable attorney fees and court costs.

23. Authority to Receive Legal Papers. Any person managing the premises, the Landlord, and anyone designated by the Landlord are authorized to accept service of process and receive other notices and demands, which may be delivered to:

☐ a. the manager, at the following address and telephone number: _____

_____

_____

☐ b. the Landlord, at the following address and telephone number: _____

_____

_____

☐ c. the following: _____

_____

_____

_____

24. Cash-Only Rent. Tenants will pay rent in the form specified above in Clause 5a. Tenants understand that if Tenants pay rent with a check that is not honored due to insufficient funds, or with a money order or cashier's check whose issuer has been instructed to stop payment, Landlord has the legal right to demand that rent be paid only in cash for up to three months after Tenants have received proper notice. (California Civil Code § 1947.3.) In that event, Landlord will give Tenants the legally required notice, and Tenants agree to abide by this change in the terms of this tenancy.

25. Additional Provisions

☐ a. None

☐ b. Additional provisions are as follows: _____

_____

_____

_____ .

26. **State Database Disclosure.** Notice: Pursuant to Section 290.46 of the Penal Code, information about specified registered sex offenders is made available to the public via an Internet website maintained by the Department of Justice at www.meganslaw.ca.gov. Depending on an offender's criminal history, this information will include either the address at which the offender resides or the community of residence and ZIP Code in which he or she resides.

27. **Lead-Based Paint and Other Disclosures.** Tenant acknowledges that Landlord has made the following disclosures regarding the premises:

☐ Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards

☐ Other disclosures: _____

_____

_____.

28. **Grounds for Termination of Tenancy.** The failure of Tenants or Tenants' guests or invitees to comply with any term of this Agreement, or the misrepresentation of any material fact on Tenants' Rental Application, is grounds for termination of the tenancy, with appropriate notice to Tenants and procedures as required by law.

29. **Entire Agreement.** This document constitutes the entire Agreement between the parties, and no promises or representations, other than those contained here and those implied by law, have been made by Landlord or Tenants. Any modifications to this Agreement must be in writing signed by Landlord and Tenants.

_____ _____

Landlord/Manager Date

_____

Landlord/Manager's Street Address, City, State, & Zip

_____

_____ _____

Tenant Date

_____ _____

Tenant Date

_____ _____

Tenant Date

Notice to Repair

To _____,

Landlord of the premises located at _____

_____.

NOTICE IS HEREBY GIVEN that unless certain defects on the premises are repaired within a reasonable time, the undersigned tenant shall exercise any and all rights accruing to him pursuant to law, including those granted by California Civil Code Sections 1941–1942.

The defects are the following: _____

_____

_____

_____

_____

_____

_____

_____

_____

_____.

_____ _____

Signature of Tenant Date

Notice of Rent Withholding

To _____,

Landlord of the premises located at _____

_____.

NOTICE IS HEREBY GIVEN that because of your failure to comply with your implied warranty of habitability by refusing to repair defects on the premises, as previously demanded of you, the undersigned tenant has elected to withhold this month's rent in accordance with California law. Rent payments will be resumed in the future, as they become due, only after said defects have been properly repaired.

_____ _____

Signature of Tenant Date

Authority: *Green v. Superior Court,* 10 Cal.3d 616 (1974).

Agreement Regarding Tenant Alterations to Rental Unit

_____ (Landlord)

and _____ (Tenant)

agree as follows:

1. Tenant may make the following alterations to the rental unit at: _____
   _____
2. Tenant will accomplish the work described in Paragraph 1 by using the following materials and procedures: _____
   _____
   _____ .
3. Tenant will do only the work outlined in Paragraph 1 using only the materials and procedures outlined in Paragraph 2.
4. The alterations carried out by Tenant (check either a or b):
   - ☐ a. will become Landlord's property and are not to be removed by Tenant during or at the end of the tenancy
   - ☐ b. will be considered Tenant's personal property, and as such may be removed by Tenant at any time up to the end of the tenancy. Tenant promises to return the premises to their original condition upon removing the improvement.
5. Landlord will reimburse Tenant only for the costs checked below:
   - ☐ the cost of materials listed in Paragraph 2
   - ☐ labor costs at the rate of $ _____ per hour for work done in a workmanlike manner acceptable to Landlord up to _____ hours.
6. After receiving appropriate documentation of the cost of materials and labor, Landlord shall make any payment called for under Paragraph 5 by:
   - ☐ lump sum payment, within _____ days of receiving documentation of costs, or
   - ☐ by reducing Tenant's rent by $ _____ per month for the number of months necessary to cover the total amounts under the terms of this agreement.
7. If under Paragraph 4 of this contract the alterations are Tenant's personal property, Tenant must return the premises to their original condition upon removing the alterations. If Tenant fails to do this, Landlord will deduct the cost to restore the premises to their original condition from Tenant's security deposit. If the security deposit is insufficient to cover the costs of restoration, Landlord may take legal action, if necessary, to collect the balance.
8. If Tenant fails to remove an improvement that is his or her personal property on or before the end of the tenancy, it will be considered the property of Landlord, who may choose to keep the improvement (with no financial liability to Tenant), or remove it and charge Tenant for the costs of removal and restoration. Landlord may deduct any costs of removal and restoration from Tenant's security deposit. If the security deposit is insufficient to cover the costs of removal and restoration, Landlord may take legal action, if necessary, to collect the balance.
9. If Tenant removes an item that is Landlord's property, Tenant will owe Landlord the fair market value of the item removed plus any costs incurred by Landlord to restore the premises to their original condition.
10. If Landlord and Tenant are involved in any legal proceeding arising out of this agreement, the prevailing party shall recover reasonable attorney fees, court costs, and any costs reasonably necessary to collect a judgment.

_____ _____
Signature of Landlord Date

_____ _____
Signature of Tenant Date

FW-001 Request to Waive Court Fees

CONFIDENTIAL

Clerk stamps date here when form is filed.

If you are getting public benefits, are a low-income person, or do not have enough income to pay for your household's basic needs and your court fees, you may use this form to ask the court to waive your court fees. The court may order you to answer questions about your finances. If the court waives the fees, you may still have to pay later if:

- You cannot give the court proof of your eligibility,
- Your financial situation improves during this case, or
- You settle your civil case for **$10,000** or more. The trial court that waives your fees will have a lien on any such settlement in the amount of the waived fees and costs. The court may also charge you any collection costs.

Fill in court name and street address:

Superior Court of California, County of

Fill in case number and name:

Case Number:

Case Name:

1 Your Information *(person asking the court to waive the fees):*

Name: _____

Street or mailing address: _____

City: _____ State: ___ Zip: _____

Phone number: _____

2 Your Job, if you have one *(job title):* _____

Name of employer: _____

Employer's address: _____

3 Your Lawyer, if you have one *(name, firm or affiliation, address, phone number, and State Bar number):*

_____

_____

a. The lawyer has agreed to advance all or a portion of your fees or costs *(check one):* Yes ☐ No ☐

b. *(If yes, your lawyer must sign here)* Lawyer's signature: _____

If your lawyer is not providing legal-aid type services based on your low income, you may have to go to a hearing to explain why you are asking the court to waive the fees.

4 What court's fees or costs are you asking to be waived?

☐ Superior Court (See *Information Sheet on Waiver of Superior Court Fees and Costs* (form FW-001-INFO).)

☐ Supreme Court, Court of Appeal, or Appellate Division of Superior Court (See *Information Sheet on Waiver of Appellate Court Fees* (form APP-015/FW-015-INFO).)

5 Why are you asking the court to waive your court fees?

a. ☐ I receive *(check all that apply; see form FW-001-INFO for definitions):* ☐ Food Stamps ☐ Supp. Sec. Inc. ☐ SSP ☐ Medi-Cal ☐ County Relief/Gen. Assist. ☐ IHSS ☐ CalWORKS or Tribal TANF ☐ CAPI

b. ☐ My gross monthly household income (before deductions for taxes) is less than the amount listed below. *(If you check 5b, you must fill out 7, 8, and 9 on page 2 of this form.)*

Family Size	Family Income	Family Size	Family Income	Family Size	Family Income	*If more than 6 people at home, add $433.34 for each extra person.*
1	$1,226.05	3	$2,092.71	5	$2,959.38	
2	$1,659.38	4	$2,526.05	6	$3,392.71	

c. ☐ I do not have enough income to pay for my household's basic needs *and* the court fees. I ask the court to: *(check one and you **must** fill out page 2):*

☐ waive all court fees and costs ☐ waive some of the court fees

☐ let me make payments over time

6 ☐ Check here if you asked the court to waive your court fees for this case in the last six months. (*If your previous request is reasonably available, please attach it to this form and check here:*) ☐

I declare under penalty of perjury under the laws of the State of California that the information I have provided on this form and all attachments is true and correct.

Date: _____

_____ ▶ _____

Print your name here *Sign here*

Your name: _____

Case Number:

*If you checked 5a on page 1, do not fill out below. If you checked 5b, fill out questions 7, 8, and 9 only. If you checked 5c, you **must** fill out this entire page. If you need more space, attach form MC-025 or attach a sheet of paper and write Financial Information and your name and case number at the top.*

7 ☐ Check here if your income changes a lot from month to month. If it does, complete the form based on your average income for the past 12 months.

8 Your Gross Monthly Income

a. List the source and amount of ***any*** income you get each month, including: wages or other income from work before deductions, spousal/child support, retirement, social security, disability, unemployment, military basic allowance for quarters (BAQ), veterans payments, dividends, interest, trust income, annuities, net business or rental income, reimbursement for job-related expenses, gambling or lottery winnings, etc.

(1) _____ $_____
(2) _____ $_____
(3) _____ $_____
(4) _____ $_____

b. **Your total monthly income**: $_____

9 Household Income

a. List the income of all other persons living in your home who depend in whole or in part on you for support, or on whom you depend in whole or in part for support.

	Name	Age	Relationship	Gross Monthly Income
(1)				$
(2)				$
(3)				$
(4)				$

b. **Total monthly income of persons above:** $_____

Total monthly income *and* household income *(8b plus 9b):* $_____

To list any other facts you want the court to know, such as unusual medical expenses, etc., attach form MC-025 or attach a sheet of paper and write Financial Information and your name and case number at the top.

Check here if you attach another page. ☐

***Important!* If your financial situation or ability to pay court fees improves, you must notify the court within five days on form FW-010.**

10 Your Money and Property

a. Cash $_____

b. All financial accounts *(List bank name and amount):*

(1) _____ $_____
(2) _____ $_____
(3) _____ $_____

c. Cars, boats, and other vehicles

	Make / Year	Fair Market Value	How Much You Still Owe
(1)		$	$
(2)		$	$
(3)		$	$

d. Real estate

	Address	Fair Market Value	How Much You Still Owe
(1)		$	$
(2)		$	$

e. Other personal property (jewelry, furniture, furs, stocks, bonds, etc.):

	Describe	Fair Market Value	How Much You Still Owe
(1)		$	$
(2)		$	$

11 Your Monthly Deductions and Expenses

a. List any payroll deductions and the monthly amount below:

(1) _____ $_____
(2) _____ $_____
(3) _____ $_____
(4) _____ $_____

b. Rent or house payment & maintenance $_____
c. Food and household supplies $_____
d. Utilities and telephone $_____
e. Clothing $_____
f. Laundry and cleaning $_____
g. Medical and dental expenses $_____
h. Insurance (life, health, accident, etc.) $_____
i. School, child care $_____
j. Child, spousal support (another marriage) $_____
k. Transportation, gas, auto repair and insurance $_____
l. Installment payments *(list each below)*:

Paid to:

(1) _____ $_____
(2) _____ $_____
(3) _____ $_____

m. Wages/earnings withheld by court order $_____
n. Any other monthly expenses *(list each below)*. $_____

Paid to: How Much?

(1) _____ $_____
(2) _____ $_____
(3) _____ $_____

Total monthly expenses *(add 11a –11n above):* $_____

FW-003 Order on Court Fee Waiver (Superior Court)

Clerk stamps date here when form is filed.

Fill in court name and street address:

Superior Court of California, County of

Fill in case number and name:

Case Number:

Case Name:

1 Person who asked the court to waive court fees:

Name: _____

Street or mailing address: _____

City: _____ State: _____ Zip: _____

2 Lawyer, if person in 1 has one *(name, address, phone number, e-mail, and State Bar number):* _____

_____

_____

_____

3 A request to waive court fees was filed on *(date):* _____

☐ The court made a previous fee waiver order in this case on *(date):*

Read this form carefully. All checked boxes ☑ are court orders.

Notice: The court may order you to answer questions about your finances and later order you to pay back the waived fees. If this happens and you do not pay, the court can make you pay the fees and also charge you collection fees. If there is a change in your financial circumstances during this case that increases your ability to pay fees and costs, you must notify the trial court within five days. (Use form FW-010.) If you win your case, the trial court may order the other side to pay the fees. If you settle your civil case for **$10,000** or more, the trial court will have a lien on the settlement in the amount of the waived fees. The trial court may not dismiss the case until the lien is paid.

4 After reviewing your: ☐ *Request to Waive Court Fees* ☐ *Request to Waive Additional Court Fees* ***the court makes the following orders:***

a. ☐ The court **grant**s your request, as follows:

(1) ☐ **Fee Waiver.** The court grants your request and waives your court fees and costs listed below. *(Cal. Rules of Court, rules 3.55 and 8.818.)* You do not have to pay the court fees for the following:

- Filing papers in Superior Court
- Making copies and certifying copies
- Sheriff 's fee to give notice
- Court fee for phone hearing
- Giving notice and certificates
- Sending papers to another court department
- Court-appointed interpreter in small claims court
- Reporter's fee for attendance at hearing or trial, if reporter provided by the court
- Assessment for court investigations under Probate Code section 1513, 1826, or 1851
- Preparing, certifying, copying, and sending the clerk's transcript on appeal
- Holding in trust the deposit for a reporter's transcript on appeal under rule 8.130 or 8.834
- Making a transcript or copy of an official electronic recording under rule 8.835

(2) ☐ **Additional Fee Waiver.** The court grants your request and waives your additional superior court fees and costs that are checked below. *(Cal. Rules of Court, rule 3.56.)* You do not have to pay for the checked items.

☐ Jury fees and expenses
☐ Fees for court-appointed experts
☐ Other *(specify):* _____
☐ Fees for a peace officer to testify in court
☐ Court-appointed interpreter fees for a witness

b. ☐ The court **denies** your fee waiver request, as follows:

Warning! If you miss the deadline below, the court cannot process your request for hearing or the court papers you filed with your original request. If the papers were a notice of appeal, the appeal may be dismissed.

(1) ☐ The court **denies** your request because it is incomplete. You have **10 days** after the clerk gives notice of this order (see date of service on next page) to:

- Pay your fees and costs, or
- File a new revised request that includes the items listed below *(specify incomplete items):*

_____

(2) ☐ The court **denies** your request because the information you provided on the request shows that you are not eligible for the fee waiver you requested *(specify reasons):* _____

_____

_____

The court has enclosed a blank *Request for Hearing About Court Fee Waiver Order (Superior Court)*, form FW-006.You have **10 days** after the clerk gives notice of this order (see date of service below) to:

- Pay your fees and costs in full or the amount listed in c. below, or
- Ask for a hearing in order to show the court more information. *(Use form FW-006 to request hearing.)*

c. ☐ The court needs more information to decide whether to grant your request. You must go to court on the date below. The hearing will be about *(specify questions regarding eligibility):*

_____

_____

☐ Bring the following proof to support your request if reasonably available:

_____

Hearing Date

Date: _____ Time: _____

Dept.: _____ Room: _____

Name and address of court if different from above:

_____

_____

_____

_____

Warning! If item c is checked, and you do not go to court on your hearing date, the judge will deny your request to waive court fees, and you will have 10 days to pay your fees. If you miss that deadline, the court cannot process the court papers you filed with your request. If the papers were a notice of appeal, the appeal may be dismissed.

Date: _____

_____

Signature of (check one): ☐ *Judicial Officer* ☐ *Clerk, Deputy*

Request for Accommodations. Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least 5 days before your hearing. Contact the clerk's office for *Request for Accommodation,* Form MC-410. (Civil Code, § 54.8.)

Clerk's Certificate of Service

I certify that I am not involved in this case and *(check one):* ☐ A certificate of mailing is attached.

☐ I handed a copy of this order to the party and attorney, if any, listed in (1) and (2), at the court, on the date below.

☐ This order was mailed first class, postage paid, to the party and attorney, if any, at the addresses listed in (1) and (2), from *(city):* _____, California on the date below.

Date: _____ Clerk, by _____, Deputy

This is a Court Order.

NOTICE: EVERYONE WHO LIVES IN THIS RENTAL UNIT MAY BE EVICTED BY COURT ORDER. READ THIS FORM IF YOU LIVE HERE AND IF YOUR NAME IS NOT ON THE ATTACHED SUMMONS AND COMPLAINT.

1. If you live here and you do not complete and submit this form, you may be evicted without further hearing by the court along with the persons named in the Summons and Complaint.
2. You must file this form within 10 days of the date of service listed in the box on the right hand side of this form.
   Exception: If you are a tenant being evicted after your landlord lost the property to foreclosure, the 10-day deadline does not apply to you and you may file this form at any time before judgment is entered.
3. If you file this form, your claim will be determined in the eviction action against the persons named in the complaint.
4. If you do not file this form, you may be evicted without further hearing.
5. If you are a tenant being evicted due to foreclosure, you have additional rights and should seek legal advice immediately.

CLAIMANT OR CLAIMANT'S ATTORNEY (*Name and Address*): TELEPHONE NO.: ATTORNEY FOR (*Name*):	***FOR COURT USE ONLY***
NAME OF COURT: STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
Plaintiff: Defendant:	
PREJUDGMENT CLAIM OF RIGHT TO POSSESSION	CASE NUMBER:
Complete this form only if ALL of these statements are true: **1. You are NOT named in the accompanying Summons and Complaint.** **2. You occupied the subject premises on or before the date the unlawful detainer (eviction) complaint was filed. (The date is in the accompanying Summons and Complaint.)** **3. You still occupy the subject premises.**	*(To be completed by the process server)* DATE OF SERVICE: *(Date that form is served or delivered, posted, and mailed by the officer or process server)*

I DECLARE THE FOLLOWING UNDER PENALTY OF PERJURY:

1. My name is *(specify):*
2. I reside at *(street address, unit no., city and ZIP code):*

3. The address of "the premises" subject to this claim is *(address)*:

4. On *(insert date):* , the landlord or the landlord's authorized agent filed a complaint to recover possession of the premises. *(This date is in the accompanying Summons and Complaint.)*
5. I occupied the premises on the date the complaint was filed *(the date in item 4)*. I have continued to occupy the premises ever since.
6. I was at least 18 years of age on the date the complaint was filed *(the date in item 4).*
7. I claim a right to possession of the premises because I occupied the premises on the date the complaint was filed *(the date in item 4).*
8. I was not named in the Summons and Complaint.
9. I understand that if I make this claim of possession, I will be added as a defendant to the unlawful detainer (eviction) action.
10. *(Filing fee)* I understand that I must go to the court and pay a filing fee of $ or file with the court an "Application for Waiver of Court Fees and Costs." I understand that if I don't pay the filing fee or file the form for waiver of court fees, I will not be entitled to make a claim of right to possession.

(Continued on reverse)

Plaintiff: Defendant:	CASE NUMBER:

11. If my landlord lost this property to foreclosure, I understand that I can file this form at any time before judgment is entered, and that I have additional rights and should seek legal advice.

12. I understand that I will have *five days* (excluding court holidays) to file a response to the Summons and Complaint after I file this Prejudgment Claim of Right to Possession form.

NOTICE: If you fail to file this claim, you may be evicted without further hearing.

13. **Rental agreement.** I have *(check all that apply to you):*
    a. ☐ an oral or written rental agreement with the landlord.
    b. ☐ an oral or written rental agreement with a person other than the landlord.
    c. ☐ an oral or written rental agreement with the former owner who lost the property to foreclosure.
    d. ☐ other *(explain):*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

WARNING: Perjury is a felony punishable by imprisonment in the state prison.

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF CLAIMANT)

NOTICE: If you file this claim to possession, the unlawful detainer action against you will be determined at trial. At trial, you may be found liable for rent, costs, and, in some cases, treble damages.

— NOTICE TO OCCUPANTS —

YOU MUST ACT AT ONCE if all the following are true:

1. **You are NOT named in the accompanying Summons and Complaint.**
2. **You occupied the premises on or before the date the unlawful detainer (eviction) complaint was filed.**
3. **You still occupy the premises.**

You can complete and SUBMIT THIS CLAIM FORM WITHIN 10 DAYS from the date of service (on the form) at the court where the unlawful detainer (eviction) complaint was filed. If you are a tenant and your landlord lost the property you occupy through foreclosure, this 10-day deadline does not apply to you. You may file this form at any time before judgment is entered. You should seek legal advice immediately.

If you do not complete and submit this form (and pay a filing fee or file a fee waiver form if you cannot pay the fee), YOU WILL BE EVICTED.

After this form is properly filed, you will be added as a defendant in the unlawful detainer (eviction) action and your right to occupy the premises will be decided by the court. *If you do not file this claim, you may be evicted without a hearing.*

Defendant in Pro Per

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF _____

_____ DIVISION/BRANCH

_____, Plaintiff(s), v. _____, _____, Defendant(s).	Case No._____

Dated: _____ _____

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*	*FOR COURT USE ONLY*
TELEPHONE NO.: E-MAIL ADDRESS *(Optional):* FAX NO. *(Optional):* ATTORNEY FOR *(Name):*	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT:	
PROOF OF SERVICE BY FIRST-CLASS MAIL—CIVIL	CASE NUMBER:

(Do not use this Proof of Service to show service of a Summons and Complaint.)

1. I am over 18 years of age and **not a party to this action.** I am a resident of or employed in the county where the mailing took place.
2. My residence or business address is:
3. On *(date):* I mailed from *(city and state):*
   the following **documents** *(specify):*

   ☐ The documents are listed in the *Attachment to Proof of Service by First-Class Mail—Civil (Documents Served)* (form POS-030(D)).
4. I served the documents by enclosing them in an envelope and *(check one):*
   a. ☐ **depositing** the sealed envelope with the United States Postal Service with the postage fully prepaid.
   b. ☐ **placing** the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
5. The envelope was addressed and mailed as follows:
   a. **Name** of person served:
   b. **Address** of person served:

   ☐ The name and address of each person to whom I mailed the documents is listed in the *Attachment to Proof of Service by First-Class Mail—Civil (Persons Served)* (POS-030(P)).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

▶ _____

(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM) (SIGNATURE OF PERSON COMPLETING THIS FORM)

INFORMATION SHEET FOR PROOF OF SERVICE BY FIRST-CLASS MAIL—CIVIL

(This information sheet is not part of the Proof of Service and does not need to be copied, served, or filed.)

NOTE: This form should **not** be used for proof of service of a summons and complaint. For that purpose, use *Proof of Service of Summons* (form POS-010).

Use these instructions to complete the *Proof of Service by First-Class Mail—Civil* (form POS-030).

A person over 18 years of age must serve the documents. There are two main ways to serve documents: (1) by personal delivery and (2) by mail. Certain documents must be personally served. You must determine whether personal service is required for a document. Use the *Proof of Personal Service–Civil* (form POS-020) if the documents were personally served.

The person who served the documents by mail must complete a proof of service form for the documents served. **You cannot serve documents if you are a party to the action.**

INSTRUCTIONS FOR THE PERSON WHO SERVED THE DOCUMENTS

The proof of service should be printed or typed. If you have Internet access, a fillable version of the Proof of Service form is available at *www.courtinfo.ca.gov/forms*.

Complete the top section of the proof of service form as follows:

First box, left side: In this box print the name, address, and telephone number of the person *for* whom you served the documents.

Second box, left side: Print the name of the county in which the legal action is filed and the court's address in this box. The address for the court should be the same as on the documents that you served.

Third box, left side: Print the names of the Petitioner/Plaintiff and Respondent/Defendant in this box. Use the same names as are on the documents that you served.

First box, top of form, right side: Leave this box blank for the court's use.

Second box, right side: Print the case number in this box. The case number should be the same as the case number on the documents that you served.

Complete items 1–5 as follows:

1. You are stating that you are over the age of 18 and that you are not a party to this action. You are also stating that you either live in or are employed in the county where the mailing took place.
2. Print your home or business address.
3. Provide the date and place of the mailing and list the name of each document that you mailed. If you need more space to list the documents, check the box in item 3, complete the *Attachment to Proof of Service by First-Class Mail—Civil (Documents Served)* (form POS-030(D)), and attach it to form POS-030.
4. For item 4:

   Check box a if you personally put the documents in the regular U.S. mail.
   Check box b if you put the documents in the mail at your place of business.
5. Provide the name and address of each person to whom you mailed the documents. If you mailed the documents to more than one person, check the box in item 5, complete the *Attachment to Proof of Service by First-Class Mail—Civil (Persons Served)* (form POS-030(P)), and attach it to form POS-030.

At the bottom, fill in the date on which you signed the form, print your name, and sign the form. By signing, you are stating under penalty of perjury that all the information you have provided on form POS-030 is true and correct.

SHORT TITLE:	CASE NUMBER:

ATTACHMENT TO PROOF OF SERVICE BY FIRST-CLASS MAIL—CIVIL (PERSONS SERVED)

(This Attachment is for use with form POS-030)

NAME AND ADDRESS OF EACH PERSON SERVED BY MAIL:

Name of Person Served	Address *(number, street, city, and zip code)*

Defendant in Pro Per

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF _____

_____ DIVISION/BRANCH

_____ ,)
) Case No._____
_____ ,)
) DEMURRER OF
Plaintiff(s),)
) _____
v.)
)
_____ ,)
) TO THE COMPLAINT OF
_____ ,)
Defendant(s).) _____
_____)

Defendant(s) demur to the Complaint on the following ground(s):

1. _____

_____

_____

2. _____

_____

_____

3. _____

_____

_____

Dated: _____ _____

Defendant in Pro Per

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF _____

_____ DIVISION/BRANCH

_____, Plaintiff(s), v. _____, _____, Defendant(s).	Case No._____ POINTS AND AUTHORITIES IN SUPPORT OF DEMURRER (CCP § 430.10)

I. DEFENDANT'S DEMURRER IS PROPERLY BEFORE THE COURT

A defendant in an unlawful detainer action may demur. C.C.P. § 1170. Although dicta in Delta Imports v. Municipal Court, 146 Cal.App.3d 1033 (1983), suggests that a motion to quash is the remedy where a complaint fails to state a cause of action in unlawful detainer, Delta did not overrule prior cases. See Hinman v. Wagnon, 172 Cal.App.2d 24 (1959), where the court held that a demurrer was proper where the incorporated 3-day notice was defective on its face. The court sustained a dismissal following sustaining the demurrer without leave to amend.

The periods for noticing hearing on a demurrer are not stated in the unlawful detainer statutes, so C.C.P. Section 1177 incorporates the regular provisions of the Code of Civil Procedure, such as C.C.P. Section 1005 requiring that motions be noticed on 16 court days' notice, plus five calendar days for mailing. Rule 3.1320(c), California Rules of Court, specifies that demurrers shall be heard in accordance with Section 1005.

//////

II. ARGUMENT

Dated: _____ _____

Defendant in Pro Per

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF _____

_____ DIVISION/BRANCH

_____, _____, Plaintiff(s), v. _____, _____, Defendant(s).	Case No. _____ NOTICE OF HEARING ON DEMURRER OF _____ TO THE COMPLAINT OF _____

To: _____

PLEASE TAKE NOTICE THAT on _____, _____, at _____ in Department No. _____ of the above entitled court, located at _____, a hearing will be held on Defendant's demurrer to the Complaint, a copy of which is served with this notice.

Dated: _____ _____

Defendant in Pro Per

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF _____

_____ DIVISION/BRANCH

_____, Plaintiff(s), v. _____, _____, Defendant(s).	Case No. _____ REQUEST FOR JUDICIAL NOTICE

Defendant _____ hereby requests that the Court take judicial notice of the Complaint filed in this action and attached hereto as Exhibit A, pursuant to California Evidence Code Section 452(d).

California Evidence Code Section 453 provides that the trial court shall take judicial notice of any matter specified in Section 452 if a party requests it, provide each party has been given sufficient notice and the court has been provided a copy. Defendant has complied with these requirements.

Dated: _____ _____

Defendant In Pro Per

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*Name*):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
Plaintiff: Defendant:	
ANSWER—UNLAWFUL DETAINER	CASE NUMBER:

1. Defendant *(each defendant for whom this answer is filed must be named and must sign this answer unless his or her attorney signs):*

   answers the complaint as follows:

2. ***Check ONLY ONE of the next two boxes*:**
   a. ☐ Defendant generally denies each statement of the complaint. *(Do not check this box if the complaint demands more than $1,000.)*
   b. ☐ Defendant admits that all of the statements of the complaint are true EXCEPT:
      (1) Defendant claims the following statements of the complaint are false *state paragraph numbers from the complaint or explain below or on form MC-025):* ☐ Explanation is on MC-025, titled as Attachment 2b(1).

      (2) Defendant has no information or belief that the following statements of the complaint are true, so defendant denies them *(state paragraph numbers from the complaint or explain below or on form MC-025):*
      ☐ Explanation is on MC-025, titled as Attachment 2b(2).

3. AFFIRMATIVE DEFENSES (***NOTE:*** *For each box checked, you must state brief facts to support it in item 3k (top of page 2).)*
   a. ☐ *(nonpayment of rent only)* Plaintiff has breached the warranty to provide habitable premises.
   b. ☐ *(nonpayment of rent only)* Defendant made needed repairs and properly deducted the cost from the rent, and plaintiff did not give proper credit.
   c. ☐ *(nonpayment of rent only)* On *(date):* before the notice to pay or quit expired, defendant offered the rent due but plaintiff would not accept it.
   d. ☐ Plaintiff waived, changed, or canceled the notice to quit.
   e. ☐ Plaintiff served defendant with the notice to quit or filed the complaint to retaliate against defendant.
   f. ☐ By serving defendant with the notice to quit or filing the complaint, plaintiff is arbitrarily discriminating against the defendant in violation of the Constitution or the laws of the United States or California.
   g. ☐ Plaintiff's demand for possession violates the local rent control or eviction control ordinance of *(city or county, title of ordinance, and date of passage)*:

      (Also, briefly state in item 3k the facts showing violation of the ordinance.)
   h. ☐ Plaintiff accepted rent from defendant to cover a period of time after the date the notice to quit expired.
   i. ☐ Plaintiff seeks to evict defendant based on acts against defendant or a member of defendant's household that constitute domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult. *(A temporary restraining order, protective order, or police report not more than 180 days old is required naming you or your household member as the protected party or a victim of these crimes.)*
   j. ☐ Other affirmative defenses are stated in item 3k.

Form Approved for Optional Use
Judicial Council of California
UD-105 [Rev. January 2, 2014]

Civil Code, § 1940 et seq.;
Code of Civil Procedure, § 425.12, § 1161 et seq.
www.courts.ca.gov

CASE NUMBER:

3. AFFIRMATIVE DEFENSES (cont'd)
   k. Facts supporting affirmative defenses checked above *(identify facts for each item by its letter from page 1 below or on form MC-025)*:
      ☐ Description of facts is on MC-025, titled as Attachment 3k.

4. OTHER STATEMENTS
   a. ☐ Defendant vacated the premises on *(date)*:
   b. ☐ The fair rental value of the premises alleged in the complaint is excessive *(explain below or on form MC-025)*:
      ☐ Explanation is on MC-025, titled as Attachment 4b.
   c. ☐ Other *(specify below or on form MC-025 in attachment)*:
      ☐ Other statements are on MC-025, titled as Attachment 4c.

5. DEFENDANT REQUESTS
   a. that plaintiff take nothing requested in the complaint.
   b. costs incurred in this proceeding.
   c. ☐ reasonable attorney fees.
   d. ☐ that plaintiff be ordered to (1) make repairs and correct the conditions that constitute a breach of the warranty to provide habitable premises and (2) reduce the monthly rent to a reasonable rental value until the conditions are corrected.
   e. ☐ Other *(specify below or on form MC-025)*:
      ☐ All other requests are stated on MC-025, titled as Attachment 5e.

6. Number of pages attached: _____

UNLAWFUL DETAINER ASSISTANT (Bus. & Prof. Code §§ 6400—6415)

7. *(Must be completed in all cases.)* An **unlawful detainer assistant** ☐ did not ☐ did for compensation give advice or assistance with this form. *(If defendant has received **any** help or advice for pay from an unlawful detainer assistant, state):*
   a. Assistant's name: b. Telephone No.:
   c. Street address, city, and zip code:
   d. County of registration: e. Registration No.: f. Expires on *(date):*

(Each defendant for whom this answer is filed must be named in item 1 and must sign this answer unless his or her attorney signs.)

_____ ▶ _____
(TYPE OR PRINT NAME) (SIGNATURE OF DEFENDANT OR ATTORNEY)

_____ ▶ _____
(TYPE OR PRINT NAME) (SIGNATURE OF DEFENDANT OR ATTORNEY)

VERIFICATION

(Use a different verification form if the verification is by an attorney or for a corporation or partnership.)

I am the defendant in this proceeding and have read this answer. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Date:

_____ _____
(TYPE OR PRINT NAME) (SIGNATURE OF DEFENDANT)

SHORT TITLE:	CASE NUMBER:

ATTACHMENT *(Number):* _____

(This Attachment may be used with any Judicial Council form.)

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

Defendant in Pro Per

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF _____

_____ DIVISION/BRANCH

_____, Plaintiff(s), v. _____, _____, Defendant(s).	Case No._____ REQUEST TO INSPECT AND FOR PRODUCTION OF DOCUMENTS (Code of Civil Procedure Sec. 2031.101–2031.510)

To: _____, Plaintiff,

and _____, Plaintiff's attorney:

Defendant requests that you produce and permit the copying of the following documents: _____

_____.

Defendant requests that you produce these documents at the following address: _____

_____, at the following date and time: _____

_____.

Defendant further requests permission to enter, inspect, and photograph the premises located at _____

_____

at the following date and time: _____.

Dated: _____ _____

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*	UNLAWFUL DETAINER ASSISTANT *(Check one box):* An unlawful detainer assistant ☐ did ☐ did not for compensation give advice or assistance with this form. (*If one did, state the following*): ASSISTANT'S NAME: ADDRESS:
ATTORNEY FOR *(Name):*	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF:	TEL. NO.: COUNTY OF REGISTRATION: REGISTRATION NO.: EXPIRES *(DATE):*
SHORT TITLE:	

FORM INTERROGATORIES—UNLAWFUL DETAINER **Asking Party:** **Answering Party:** **Set No.:**	CASE NUMBER:

Sec. 1. Instructions to All Parties

(a) These are general instructions. For time limitations, requirements for service on other parties, and other details, see Code of Civil Procedure sections 2030.010-2030.410 and the cases construing those sections.

(b) These interrogatories do not change existing law relating to interrogatories nor do they affect an answering party's right to assert any privilege or objection.

Sec. 2. Instructions to the Asking Party

(a) These interrogatories are designed for optional use in unlawful detainer proceedings.

(b) There are restrictions that generally limit the number of interrogatories that may be asked and the form and use of the interrogatories. For details, read Code of Civil Procedure sections 2030.030–2030.070.

(c) In determining whether to use these or any interrogatories, you should be aware that abuse can be punished by sanctions, including fines and attorney fees. See Code of Civil Procedure section 128.7.

(d) Check the box next to each interrogatory that you want the answering party to answer. Use care in choosing those interrogatories that are applicable to the case.

(e) Additional interrogatories may be attached.

Sec. 3. Instructions to the Answering Party

(a) An answer or other appropriate response must be given to each interrogatory checked by the asking party. Failure to respond to these interrogatories properly can be punished by sanctions, including contempt proceedings, fine, attorneys fees, and the loss of your case. See Code of Civil Procedure sections 128.7 and 2030.300.

(b) As a general rule, within five days after you are served with these interrogatories, you must serve your responses on the asking party and serve copies of your responses on all other parties to the action who have appeared. See Code of Civil Procedure sections 2030.260–2030.270 for details.

(c) Each answer must be as complete and straightforward as the information reasonably available to you permits. If an interrogatory cannot be answered completely, answer it to the extent possible.

(d) If you do not have enough personal knowledge to fully answer an interrogatory, say so, but make a reasonable and good faith effort to get the information by asking other persons or organizations, unless the information is equally available to the asking party.

(e) Whenever an interrogatory may be answered by referring to a document, the document may be attached as an exhibit to the response and referred to in the response. If the document has more than one page, refer to the page and section where the answer to the interrogatory can be found.

(f) Whenever an address and telephone number for the same person are requested in more than one interrogatory, you are required to furnish them in answering only the first interrogatory asking for that information.

(g) Your answers to these interrogatories must be verified, dated, and signed. You may wish to use the following form *at the end of your answers:*

I declare under penalty of perjury under the laws of the State of California that the foregoing answers are true and correct.

(DATE) (SIGNATURE)

Sec. 4. Definitions

Words in **BOLDFACE CAPITALS** in these interrogatories are defined as follows:

(a) **PERSON** includes a natural person, firm, association, organization, partnership, business, trust, corporation, or public entity.

(b) **PLAINTIFF** includes any **PERSON** who seeks recovery of the **RENTAL UNIT** whether acting as an individual or on someone else's behalf and includes all such **PERSONS** if more than one.

Form Approved for Optional Use
Judicial Council of California
DISC-003/UD-106 [Rev. January 1, 2014]

Code of Civil Procedure,
§§ 2030.010-2030.410, 2033.710
www.courts.ca.gov

(c) **LANDLORD** includes any **PERSON** who offered the **RENTAL UNIT** for rent and any **PERSON** on whose behalf the **RENTAL UNIT** was offered for rent and their successors in interest. **LANDLORD** includes all **PERSONS** who managed the **PROPERTY** while defendant was in possession.

(d) **RENTAL UNIT** is the premises **PLAINTIFF** seeks to recover.

(e) **PROPERTY** is the building or parcel (including common areas) of which the **RENTAL UNIT** is a part. (For example, if **PLAINTIFF** is seeking to recover possession of apartment number 12 of a 20-unit building, the building is the **PROPERTY** and apartment 12 is the **RENTAL UNIT**. If **PLAINTIFF** seeks possession of cottage number 3 in a five-cottage court or complex, the court or complex is the **PROPERTY** and cottage 3 is the **RENTAL UNIT**.)

(f) **DOCUMENT** means a writing, as defined in Evidence Code section 250, and includes the original or a copy of handwriting, typewriting, printing, photostating, photographing, electronically stored information, and every other means of recording upon any tangible thing and form of communicating or representation, including letters, words, pictures, sounds, or symbols, or combinations of them.

(g) **NOTICE TO QUIT** includes the original or copy of any notice mentioned in Code of Civil Procedure section 1161 or Civil Code section 1946, including a 3-day notice to pay rent and quit the **RENTAL UNIT**, a 3-day notice to perform conditions or covenants or quit, a 3-day notice to quit, and a 30-day notice of termination.

(h) **ADDRESS** means the street address, including the city, state, and zip code.

Sec. 5. Interrogatories

The following interrogatories have been approved by the Judicial Council under section 2033.710 of the Code of Civil Procedure for use in unlawful detainer proceedings:

CONTENTS

70.0 General

[Either party may ask any applicable question in this section.]

☐ 70.1 State the name, **ADDRESS**, telephone number, and relationship to you of each **PERSON** who prepared or assisted in the preparation of the responses to these interrogatories. (Do not identify anyone who simply typed or reproduced the responses.)

☐ 70.2 Is **PLAINTIFF** an owner of the **RENTAL UNIT**? If so, state:
(a) the nature and percentage of ownership interest;
(b) the date **PLAINTIFF** first acquired this ownership interest.

☐ 70.3 Does **PLAINTIFF** share ownership or lack ownership? If so, state the name, the **ADDRESS**, and the nature and percentage of ownership interest of each owner.

☐ 70.4 Does **PLAINTIFF** claim the right to possession other than as an owner of the **RENTAL UNIT**? If so, state the basis of the claim.

☐ 70.5 Has **PLAINTIFF'S** interest in the **RENTAL UNIT** changed since acquisition? If so, state the nature and dates of each change.

☐ 70.6 Are there other rental units on the **PROPERTY**? If so, state how many.

☐ 70.7 During the 12 months before this proceeding was filed, did **PLAINTIFF** possess a permit or certificate of occupancy for the **RENTAL UNIT**? If so, for each state:
(a) the name and **ADDRESS** of each **PERSON** named on the permit or certificate;
(b) the dates of issuance and expiration;
(c) the permit or certificate number

☐ 70.8 Has a last month's rent, security deposit, cleaning fee, rental agency fee, credit check fee, key deposit, or any other deposit been paid on the **RENTAL UNIT**? If so, for each item state:
(a) the purpose of the payment;
(b) the date paid;
(c) the amount;
(d) the form of payment;
(e) the name of the **PERSON** paying;
(f) the name of the **PERSON** to whom it was paid;
(g) any **DOCUMENT** which evidences payment and the name, **ADDRESS**, and telephone number of each **PERSON** who has the **DOCUMENT**;
(h) any adjustments or deductions including facts.

☐ 70.9 State the date defendant first took possession of the **RENTAL UNIT**.

☐ 70.10 State the date and all the terms of any rental agreement between defendant and the **PERSON** who rented to defendant.

☐ 70.11 For each agreement alleged in the pleadings:
(a) identify all **DOCUMENTS** that are part of the agreement and for each state the name, **ADDRESS**, and telephone number of each **PERSON** who has the **DOCUMENT;**
(b) state each part of the agreement not in writing, the name, **ADDRESS,** and telephone number of each **PERSON** agreeing to that provision, and the date that part of the agreement was made;
(c) identify all **DOCUMENTS** that evidence each part of the agreement not in writing and for each state the name, **ADDRESS,** and telephone number of each **PERSON** who has the **DOCUMENT**;
(d) identify all **DOCUMENTS** that are part of each modification to the agreement, and for each state

the name, **ADDRESS**, and telephone number of each **PERSON** who has the **DOCUMENT** (see also §71.5);

(e) state each modification not in writing, the date, and the name, **ADDRESS,** and telephone number of the **PERSON** agreeing to the modification, and the date the modification was made (see also §71.5).

(f) identify all **DOCUMENTS** that evidence each modification of the agreement not in writing and for each state the name, **ADDRESS,** and telephone number of each **PERSON** who has the **DOCUMENT** (see also §71.5).

☐ 70.12 Has any **PERSON** acting on the **PLAINTIFF'S** behalf been responsible for any aspect of managing or maintaining the **RENTAL UNIT** or **PROPERTY**? If so, for each **PERSON** state:
(a) the name, **ADDRESS**, and telephone number;
(b) the dates the **PERSON** managed or maintained the **RENTAL UNIT** or **PROPERTY**;
(c) the **PERSON'S** responsibilities.

☐ 70.13 For each **PERSON** who occupies any part of the **RENTAL UNIT** (except occupants named in the complaint and occupants' children under 17) state:
(a) the name, **ADDRESS**, telephone number, and birthdate;
(b) the inclusive dates of occupancy;
(c) a description of the portion of the **RENTAL UNIT** occupied;
(d) the amount paid, the term for which it was paid, and the person to whom it was paid;
(e) the nature of the use of the **RENTAL UNIT**;
(f) the name, **ADDRESS**, and telephone number of the person who authorized occupancy;
(g) how occupancy was authorized, including failure of the **LANDLORD** or **PLAINTIFF** to protest after discovering the occupancy.

☐ 70.14 Have you or anyone acting on your behalf obtained any **DOCUMENT** concerning the tenancy between any occupant of the **RENTAL UNIT** and any **PERSON** with an ownership interest or managerial responsibility for the **RENTAL UNIT**? If so, for each **DOCUMENT** state:
(a) the name, **ADDRESS**, and telephone number of each individual from whom the **DOCUMENT** was obtained;
(b) the name, **ADDRESS**, and telephone number of each individual who obtained the **DOCUMENT**;
(c) the date the **DOCUMENT** was obtained;
(d) the name, **ADDRESS**, and telephone number of each **PERSON** who has the **DOCUMENT** (original or copy).

71.0 Notice

[If a defense is based on allegations that the 3-day notice or 30- day **NOTICE TO QUIT** *is* defective in form or content, *then either party may ask any applicable question in this section.]*

☐ 71.1 Was the **NOTICE TO QUIT** on which **PLAINTIFF** bases this proceeding attached to the complaint? If not, state the contents of this notice.

☐ 71.2 State all reasons that the **NOTICE TO QUIT** was served and for each reason:
(a) state all facts supporting **PLAINTIFF'S** decision to terminate defendant's tenancy;
(b) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts;
(c) identify all **DOCUMENTS** that support the facts and state the name, **ADDRESS**, and telephone number of each **PERSON** who has each **DOCUMENT**.

☐ 71.3 List all rent payments and rent credits made or claimed by or on behalf of defendant beginning 12 months before the **NOTICE TO QUIT** was served. For each payment or credit state:
(a) the amount;
(b) the date received;
(c) the form in which any payment was made;
(d) the services performed or other basis for which a credit is claimed;
(e) the period covered;
(f) the name of each **PERSON** making the payment or earning the credit;
(g) the identity of all **DOCUMENTS** evidencing the payment or credit and for each state the name, **ADDRESS**, and telephone number of each **PERSON** who has the **DOCUMENT**.

☐ 71.4 Did defendant ever fail to pay the rent on time? If so, for each late payment state:
(a) the date;
(b) the amount of any late charge;
(c) the identity of all **DOCUMENTS** recording the payment and for each state the name, **ADDRESS**, and telephone number of each **PERSON** who has the **DOCUMENT**.

☐ 71.5 Since the beginning of defendant's tenancy, has **PLAINTIFF** ever raised the rent? If so, for each rent increase state:
(a) the date the increase became effective;
(b) the amount;
(c) the reasons for the rent increase;
(d) how and when defendant was notified of the increase;
(e) the identity of all **DOCUMENTS** evidencing the increase and for each state the name, **ADDRESS**, and telephone number of each **PERSON** who has the **DOCUMENT**.

[See also section 70.11 (d) - (f).]

☐ 71.6 During the 12 months before the **NOTICE TO QUIT** was served was there a period during which there was no permit or certificate of occupancy for the **RENTAL UNIT**? If so, for each period state:
(a) the inclusive dates;
(b) the reasons.

☐ 71.7 Has any **PERSON** ever reported any nuisance or disturbance at or destruction of the **RENTAL UNIT** or **PROPERTY** caused by defendant or other occupant of the **RENTAL UNIT** or their guests? If so, for each report state;
(a) a description of the disturbance or destruction;
(b) the date of the report;
(c) the name of the **PERSON** who reported;
(d) the name of the **PERSON** to whom the report was made;
(e) what action was taken as a result of the report;
(f) the identity of all **DOCUMENTS** evidencing the report and for each state the name, **ADDRESS**, and telephone number of each **PERSON** who has each **DOCUMENT**.

☐ 71.8 Does the complaint allege violation of a term of a rental agreement or lease (other than nonpayment of rent)? If so, for each covenant:
(a) identify the covenant breached;
(b) state the facts supporting the allegation of a breach;
(c) state the names, **ADDRESSES,** and telephone numbers of all **PERSONS** who have knowledge of the facts;
(d) identify all **DOCUMENTS** that support the facts and state the name, **ADDRESS,** and telephone number of each **PERSON** who has each **DOCUMENT.**

☐ 71.9 Does the complaint allege that the defendant has been using the **RENTAL UNIT** for an illegal purpose? If so, for each purpose:
(a) identify the illegal purpose;
(b) state the facts supporting the allegations of illegal use;
(c) state the names, **ADDRESSES,** and telephone numbers of all **PERSONS** who have knowledge of the facts;
(d) identify all **DOCUMENTS** that support the facts and state the name, **ADDRESS,** and telephone number of each **PERSON** who has each **DOCUMENT.**

[Additional interrogatories on this subject may be found in sections 75.0, 78.0, 79.0, and 80.0.]

72.0 Service

[If a defense is based on allegations that the **NOTICE TO QUIT** *was* defectively served, *then either party may ask any applicable question in this section.]*

☐ 72.1 Does defendant contend (or base a defense or make any allegations) that the **NOTICE TO QUIT** was defectively served? If the answer is "no", do not answer interrogatories 72.2 through 72.3.

☐ 72.2 Does **PLAINTIFF** contend that the **NOTICE TO QUIT** referred to in the complaint was served? If so, state:
(a) the kind of notice;
(b) the date and time of service;
(c) the manner of service;
(d) the name and **ADDRESS** of the person who served it:
(e) a description of any **DOCUMENT** or conversation between defendant and the person who served the notice.

☐ 72.3 Did any person receive the **NOTICE TO QUIT** referred to in the complaint? If so, for each copy of each notice state:
(a) the name of the person who received it;
(b) the kind of notice;
(c) how it was delivered;
(d) the date received;
(e) where it was delivered;
(f) the identity of all **DOCUMENTS** evidencing the notice and for each state the name, **ADDRESS**, and telephone number of each **PERSON** who has the **DOCUMENT**.

73.0 Malicious Holding Over

[If a defendant denies allegations that defendant's continued possession is malicious, then either party may ask any applicable question in this section. Additional questions in section 75.0 may also be applicable.]

☐ 73.1 If any rent called for by the rental agreement is unpaid, state the reasons and the facts upon which the reasons are based.

☐ 73.2 Has defendant made attempts to secure other premises since the service of the **NOTICE TO QUIT** or since the service of the summons and complaint? If so, for each attempt:
(a) state all facts indicating the attempt to secure other premises;
(b) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts;
(c) identify all **DOCUMENTS** that support the facts and state the name, **ADDRESS**, and telephone number of each **PERSON** who has each **DOCUMENT**.

☐ 73.3 State the facts upon which **PLAINTIFF** bases the allegation of malice.

74.0 Rent Control and Eviction Control

☐ 74.1 Is there an ordinance or other local law in this jurisdiction which limits the right to evict tenants? If your answer is no, you need not answer sections 74.2 through 74.6.

☐ 74.2 For the ordinance or other local law limiting the right to evict tenants, state:
(a) the title or number of the law;
(b) the locality.

☐ 74.3 Do you contend that the **RENTAL UNIT** is exempt from the eviction provisions of the ordinance or other local law identified in section 74.2? If so, state the facts upon which you base your contention.

☐ 74.4 Is this proceeding based on allegations of a need to recover the **RENTAL UNIT** for use of the **LANDLORD** or the landlord's relative? If so, for each intended occupant state:
(a) the name;
(b) the residence **ADDRESSES** from three years ago to the present;
(c) the relationship to the **LANDLORD**;
(d) all the intended occupant's reasons for occupancy;
(e) all rental units on the **PROPERTY** that were vacated within 60 days before and after the date the **NOTICE TO QUIT** was served.

☐ 74.5 Is the proceeding based on an allegation that the **LANDLORD** wishes to remove the **RENTAL UNIT** from residential use temporarily or permanently (for example, to rehabilitate, demolish, renovate, or convert)? If so, state:
(a) each reason for removing the **RENTAL UNIT** from residential use;
(b) what physical changes and renovation will be made to the **RENTAL UNIT**;
(c) the date the work is to begin and end;
(d) the number, date, and type of each permit for the change or work;

(e) the identity of each **DOCUMENT** evidencing the intended activity (for example, blueprints, plans, applications for financing, construction contracts) and the name, **ADDRESS**, and telephone number of each PERSON who has each **DOCUMENT**.

☐ 74.6 Is the proceeding based on any ground other than those stated in sections 74.4 and 74.5? If so, for each:
(a) state each fact supporting or opposing the ground;
(b) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts;
(c) identify all **DOCUMENTS** evidencing the facts and state the name, **ADDRESS**, and telephone number of each **PERSON** who has each **DOCUMENT**.

75.0 Breach of Warranty to Provide Habitable Premises

[If plaintiff alleges nonpayment of rent and defendant bases his defense on allegations of implied or express breach of warranty to provide habitable residential premises, then either party may ask any applicable question in this section.]

☐ 75.1 Do you know of any conditions in violation of state or local building codes, housing codes, or health codes, conditions of dilapidation, or other conditions in need of repair in the **RENTAL UNIT** or on the **PROPERTY** that affected the **RENTAL UNIT** at any time defendant has been in possession? If so, state:
(a) the type of condition;
(b) the kind of corrections or repairs needed;
(c) how and when you learned of these conditions;
(d) how these conditions were caused;
(e) the name, **ADDRESS**, and telephone number of each **PERSON** who has caused these conditions.

☐ 75.2 Have any corrections, repairs, or improvements been made to the **RENTAL UNIT** since the **RENTAL UNIT** was rented to defendant? If so, for each correction, repair, or improvement state:
(a) a description giving the nature and location;
(b) the date;
(c) the name, **ADDRESS**, and telephone number of each **PERSON** who made the repairs or improvements;
(d) the cost;
(e) the identity of any **DOCUMENT** evidencing the repairs or improvements;
(f) if a building permit was issued, state the issuing agencies and the permit number of your copy.

☐ 75.3 Did defendant or any other **PERSON** during 36 months before the **NOTICE TO QUIT** was served or during defendant's possession of the **RENTAL UNIT** notify the **LANDLORD** or his agent or employee about the condition of the **RENTAL UNIT** or **PROPERTY**? If so, for each written or oral notice state:
(a) the substance;
(b) who made it;
(c) when and how it was made;
(d) the name and **ADDRESS** of each **PERSON** to whom it was made;
(e) the name and **ADDRESS** of each person who knows about it;
(f) the identity of each **DOCUMENT** evidencing the notice and the name, **ADDRESS**, and telephone number of each **PERSON** who has it;
(g) the response made to the notice;
(h) the efforts made to correct the conditions;
(i) whether the **PERSON** who gave notice was an occupant of the **PROPERTY** at the time of the complaint.

☐ 75.4 During the period beginning 36 months before the **NOTICE TO QUIT** was served to the present, was the **RENTAL UNIT** or **PROPERTY** (including other rental units) inspected for dilapidations or defective conditions by a representative of any governmental agency? If so, for each inspection state:
(a) the date;
(b) the reason;
(c) the name of the governmental agency;
(d) the name, **ADDRESS**, and telephone number of each inspector;
(e) the identity of each **DOCUMENT** evidencing each inspection and the name, **ADDRESS**, and telephone number of each **PERSON** who has it.

☐ 75.5 During the period beginning 36 months before the **NOTICE TO QUIT** was served to the present, did **PLAINTIFF** or **LANDLORD** receive a notice or other communication regarding the condition of the **RENTAL UNIT** or **PROPERTY** (including other rental units) from a governmental agency? If so, for each notice or communication state:
(a) the date received;
(b) the identity of all parties;
(c) the substance of the notice or communication;
(d) the identity of each **DOCUMENT** evidencing the notice or communication and the name, **ADDRESS**, and telephone number of each **PERSON** who has it.

☐ 75.6 Was there any corrective action taken in response to the inspection or notice or communication identified in sections 75.4 and 75.5? If so, for each:
(a) identify the notice or communication;
(b) identify the condition;
(c) describe the corrective action;
(d) identify each **DOCUMENT** evidencing the corrective action and the name, **ADDRESS**, and telephone number of each **PERSON** who has it.

☐ 75.7 Has the **PROPERTY** been appraised for sale or loan during the period beginning 36 months before the **NOTICE TO QUIT** was served to the present? If so, for each appraisal state:
(a) the date;
(b) the name, **ADDRESS**, and telephone number of the appraiser;
(c) the purpose of the appraisal;
(d) the identity of each **DOCUMENT** evidencing the appraisal and the name, **ADDRESS,** and telephone number of each **PERSON** who has it.

☐ 75.8 Was any condition requiring repair or correction at the **PROPERTY** or **RENTAL UNIT** caused by defendent or other occupant of the **RENTAL UNIT** or their guests? If so, state:
(a) the type and location of condition;
(b) the kind of corrections or repairs needed;
(c) how and when you learned of these conditions;
(d) how and when these conditions were caused;
(e) the name, **ADDRESS**, and telephone number of each **PERSON** who caused these conditions;

(f) the identity of each **DOCUMENT** evidencing the repair (or correction) and the name, **ADDRESS**, and telephone number of each **PERSON** who has it.

[*See also section 71.0 for additional questions.*]

76.0 Waiver, Change, Withdrawal, or Cancellation of Notice to Quit

[If a defense is based on waiver, change, withdrawal, or cancellation of the **NOTICE TO QUIT***, then either party may ask any applicable question in this section.]*

☐ 76.1 Did the **PLAINTIFF or LANDLORD** or anyone acting on his or her behalf do anything which is alleged to have been a waiver, change, withdrawal, or cancellation of the **NOTICE TO QUIT**? If so:
(a) state the facts supporting this allegation;
(b) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of these facts;
(c) identify each **DOCUMENT** that supports the facts and state the name, **ADDRESS**, and telephone number of each **PERSON** who has it.

☐ 76.2 Did the **PLAINTIFF** or **LANDLORD** accept rent **which covered a period after the date for vacating the RENTAL UNIT** as specified in the **NOTICE TO QUIT**? If so:
(a) state the facts;
(b) state the names, **ADDRESSES,** and telephone numbers of all **PERSONS** who have knowledge of the facts;
(c) identify each **DOCUMENT** that supports the facts and state the name, **ADDRESS**, and telephone number of each **PERSON** who has it.

77.0 Retaliation and Arbitrary Discrimination

[If a defense is based on retaliation or arbitrary discrimination, then either party may ask any applicable question in this section.]

☐ 77.1 State all reasons that the **NOTICE TO QUIT** was served or that defendant's tenancy was not renewed and for each reason:
(a) state all facts supporting **PLAINTIFF'S** decision to terminate or not renew defendant's tenancy;
(b) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts;
(c) identify all **DOCUMENTS** that support the facts and state the name, **ADDRESS**, and telephone number of each **PERSON** who has it.

78.0 Nonperformance of the Rental Agreement by Landlord

[If a defense is based on nonperformance of the rental agreement by the **LANDLORD** *or someone acting on the* **LANDLORD'S** *behalf, then either party may ask any applicable question in this section.]*

☐ 78.1 Did the **LANDLORD** or anyone acting on the **LANDLORD'S** behalf agree to make repairs, alterations, or improvements at any time or provide services to the **PROPERTY** or **RENTAL UNIT**? If so, for each agreement state:
(a) the substance of the agreement;
(b) when it was made;
(c) whether it was written or oral;
(d) by whom and to whom;
(e) the name and **ADDRESS** of each person who knows about it;
(f) whether all promised repairs, alterations, or improvements were completed or services provided;
(g) the reasons for any failure to perform;
(h) the identity of each **DOCUMENT** evidencing the agreement or promise and the name, **ADDRESS**, and telephone number of each **PERSON** who has it.

☐ 78.2 Has **PLAINTIFF** or **LANDLORD** or any resident of the **PROPERTY** ever committed disturbances or interfered with the quiet enjoyment of the **RENTAL UNIT** (including, for example, noise, acts which threaten the loss of title to the property or loss of financing, etc.)? If so, for each disturbance or interference, state:
(a) a description of each act;
(b) the date of each act;
(c) the name, **ADDRESS,** and telephone number of each **PERSON** who acted;
(d) the name, **ADDRESS,** and telephone number of each **PERSON** who witnessed each act and any **DOCUMENTS** evidencing the person's knowledge;
(e) what action was taken by the **PLAINTIFF** or **LANDLORD** to end or lessen the disturbance or interference.

79.0 Offer of Rent by Defendant

[If a defense is based on an offer of rent by a defendant which was refused, then either party may ask any applicable question in this section.]

☐ 79.1 Has defendant or anyone acting on the defendant's behalf offered any payments to **PLAINTIFF** which **PLAINTIFF** refused to accept? If so, for each offer state:
(a) the amount;
(b) the date;
(c) purpose of offer;
(d) the manner of the offer;
(e) the identity of the person making the offer;
(f) the identity of the person refusing the offer;
(g) the date of the refusal;
(h) the reasons for the refusal.

80.0 Deduction from Rent for Necessary Repairs

[If a defense to payment of rent or damages is based on claim of retaliatory eviction, then either party may ask any applicable question in this section. Additional questions in section 75.0 may also be applicable.]

☐ 80.1 Does defendant claim to have deducted from rent any amount which was withheld to make repairs after communication to the **LANDLORD** of the need for the repairs? If the answer is "no", do not answer interrogatories 80.2 through 80.6.

☐ 80.2 For each condition in need of repair for which a deduction was made, state:
(a) the nature of the condition;
(b) the location;
(c) the date the condition was discovered by defendant;
(d) the date the condition was first known by **LANDLORD** or **PLAINTIFF**;

(e) the dates and methods of each notice to the **LANDLORD** or **PLAINTIFF** of the condition;
(f) the response or action taken by the **LANDLORD** or **PLAINTIFF** to each notification;
(g) the cost to remedy the condition and how the cost was determined;
(h) the identity of any bids obtained for the repairs and any **DOCUMENTS** evidencing the bids.

☐ 80.3 Did **LANDLORD** or **PLAINTIFF** fail to respond within a reasonable time after receiving a communication of a need for repair? If so, for each communication state:
(a) the date it was made;
(b) how it was made;
(c) the response and date;
(d) why the delay was unreasonable.

☐ 80.4 Was there an insufficient period specified or actually allowed between the time of notification and the time repairs were begun by defendant to allow **LANDLORD** or **PLAINTIFF** to make the repairs? If so, state all facts on which the claim of insufficiency is based.

☐ 80.5 Does **PLAINTIFF** contend that any of the items for which rent deductions were taken were not allowable under law? If so, for each item state all reasons and facts on which you base your contention.

☐ 80.6 Has defendant vacated or does defendant anticipate vacating the **RENTAL UNIT** because repairs were requested and not made within a reasonable time? If so, state all facts on which defendant justifies having vacated the RENTAL UNIT or anticipates vacating the rental unit.

81.0 Fair Market Rental Value

[If defendant denies **PLAINTIFF** *allegation on the fair market rental value of the* **RENTAL UNIT**, *then either party may ask any applicable question in this section. If defendant claims that the fair market rental value is less because of a breach of warranty to provide habitable premises, then either party may also ask any applicable question in section 75.0.]*

☐ 81.1 Do you have an opinion on the fair market rental value of the **RENTAL UNIT**? If so, state:
(a) the substance of your opinion;
(b) the factors upon which the fair market rental value is based;
(c) the method used to calculate the fair market rental value.

☐ 81.2 Has any other **PERSON** ever expressed to you an opinion on the fair market rental value of the **RENTAL UNIT**? If so, for each **PERSON**:
(a) state the name, **ADDRESS**, and telephone number;
(b) state the substance of the **PERSON'S** opinion;
(c) describe the conversation or identify all **DOCUMENTS** in which the **PERSON** expressed an opinion and state the name, **ADDRESS**, and telephone number of each **PERSON** who has each **DOCUMENT**.

☐ 81.3 Do you know of any current violations of state or local building codes, housing codes, or health codes, conditions of delapidation or other conditions in need of repair in the **RENTAL UNIT** or common areas that have affected the **RENTAL UNIT** at any time defendant has been in possession? If so, state:
(a) the conditions in need of repair;
(b) the kind of repairs needed;
(c) the name, ADDRESS, and telephone number of each PERSON who caused these conditions.

SETTLEMENT AGREEMENT

1. _____ ("tenant") resides at the following premises: _____ _____ ("premises").

2. _____ ("landlord") is the owner of the premises.

3. On _____, 20____ landlord caused a Summons and Complaint in unlawful detainer to be served on tenant. The complaint was filed in the Superior Court for the County of _____, _____ District, and carries the following civil number: _____.

4. Landlord and tenant agree that tenant shall vacate the premises on or before _____, 20____. In exchange for this agreement, and upon full performance by tenant, landlord agrees to file a voluntary dismissal with prejudice of the Complaint specified in clause #3.

5. Also in exchange for tenant's agreement to vacate the premises on or before the date specified in clause #4, landlord agrees to:

(*Choose one or more of the following*)

☐ Forgive all past due rent

☐ Forgive past due rent in the following amount: $_____

☐ Pay the tenant $_____ to cover tenant's moving expenses, new deposit requirements, and other incidentals related to the tenant moving out.

6. Any sum specified in clause #5 to be paid by the landlord shall be paid as follows:

(*Choose one or more of the following*)

☐ Upon tenant surrendering the keys to the premises

☐ Upon the signing of this agreement

☐ $_____ upon the signing of this agreement and $_____ upon tenant surrendering the keys

☐ in the following manner:

7. The tenant's security deposit being held by landlord shall be handled as follows:

☐ restored in full to the tenant upon surrender of the keys

☐ treated according to law

☐ other: _____

_____

8. Tenant and landlord also agree:

a) to waive all claims and demands that each may have against the other for any transaction directly or indirectly arising from their Landlord-Tenant relationship or, except as stated herein, to retain all rights they have against the other.

b) that this settlement agreement not be construed as reflecting on the merits of the dispute, and

c) that landlord shall not make any negative representations to any credit reporting agency or to any other person or entity seeking information about whether tenant was a good or bad tenant.

9. Time is of the essence in this agreement. If tenant fails to timely comply with this agreement, landlord may immediately rescind this agreement in writing and proceed with his or her legal and equitable remedies.

10. This agreement was executed on _____ , _____ at _____ .

Signed: _____

_____

Signed: _____

_____

Defendant in Pro Per

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF _____

_____ DIVISION/BRANCH

_____, Plaintiff(s), v. _____, _____, Defendant(s).	Case No._____ DEMAND FOR JURY TRIAL

To the clerk of the above-entitled court:

Defendant(s) hereby demand a jury trial in this action.

Dated: _____ _____

Defendant in Pro Per

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF _____

_____ DIVISION/BRANCH

_____ , Plaintiff(s), v. _____ , _____ , Defendant(s).	Case No._____ APPLICATION AND DECLARATION FOR RELIEF FROM EVICTION (Code of Civil Procedure Secs. 1174(c), 1179)

Defendant(s) _____

_____ ,

hereby apply for relief from eviction, after judgment for plaintiff in this action.

If Defendants are evicted, they will suffer undue hardship in the following way(s): _____

_____

_____ .

Plaintiff will not be substantially prejudiced if relief is granted.

Defendants are willing and able to pay all money they presently owe to Plaintiff, as a condition to this application being granted. Defendants are also willing and able to pay the rent as it comes due in the future.

I declare under penalty of perjury under the laws of the State of California that the above statements are true and correct.

Dated: _____ _____

Defendant in Pro Per

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF _____

_____ DIVISION/BRANCH

_____, Plaintiff(s), v. _____, _____, Defendant(s).	Case No._____ NOTICE OF MOTION AND POINTS AND AUTHORITIES FOR RELIEF FROM EVICTION (Code of Civil Procedure Sec. 1179)

TO PLAINTIFF AND ITS ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that on _____ or as soon thereafter as may be heard in the Law and Motion department of the above entitled court located at _____, Courtroom _____, Defendant _____ will move the court for an order relieving it from the forfeiture of its ten year lease, said forfeiture resulting from a failure to pay one month's rent within the three days requested in the Three Day Notice to Pay Rent or Quit. In exchange for such relief, Defendant will make full compensation to Plaintiff. This motion is brought under Code of Civil Procedure § 1179 on the grounds that Defendant will suffer extreme hardship should the requested relief not be granted.

This motion will be based on this Notice of Motion, the Memorandum of Points and Authorities attached hereto, the Declarations of _____, and on all other such oral and documentary evidence and argument as may be presented at the hearing on said motion.

Dated: _____ _____

Defendant In Pro Per

MEMORANDUM OF POINTS AND AUTHORITIES

Defendant is seeking relief from forfeiture under Code of Civil Procedure Section 1179. This section reads as follows:

> The court may relieve a tenant against a forfeiture of a lease or rental agreement, whether written or oral, and whether or not the tenancy has terminated, and restore him or her to his or her former estate or tenancy, in case of hardship, as provided in Section 1174. The court has the discretion to relieve any person against forfeiture on its own motion.
>
> An application for relief against forfeiture may be made at any time prior to restoration of the premises to the landlord. The application may be made by a tenant or subtenant, or a mortgagee of the term, or any person interested in the continuance of the term. It must be made upon petition, setting forth the facts upon which the relief is sought, and be verified by the applicant. Notice of the application, with a copy of the petition, must be served at least five days prior to the hearing on the plaintiff in the judgment, who may appear and contest the application. Alternatively, a person appearing without an attorney may make the application orally, if the plaintiff either is present and has an opportunity to contest the application, or has been given ex parte notice of the hearing and the purpose of the oral application. In no case shall the application or motion be granted except on condition that full payment of rent due, or full performance of conditions or covenants stipulated, so far as the same is practicable, be made.

This Statute is specific to unlawful detainer actions and vests the court with equitable power to relieve a tenant from forfeiture and restore him or her to his or her former estate or tenancy; so long as court imposes statutory conditions, full payment of rent due. *Gill Petroleum, Inc. v. Hayer* (2006) 137 Cal.App.4th 826, 832, 833. In considering this relief, courts will balance the hardship to the tenant against the prejudice (if any) to the landlord if relief is granted. In doing so, the court looks at all the underlying facts, including the nature of the underlying reasons for eviction, whether or not the tenant's actions were willful, or in bad faith, and whether the landlord's actions were in good or bad faith. *Thrifty Oil v. Batarse*, (1985) 174 Cal.App.3d 770.

In this case, _____,

_____,

_____,

_____,

_____,

_____,

_____,

_____,

_____,

_____,

_____,

_____,

Defendant will suffer extreme hardship because _____,

_____,

_____,

Defendant is willing to pay all the rent that is due to the plaintiff.

Plaintiff will not be substantially prejudiced if the relief requested is granted.

Dated: _____ _____

Defendant In Pro Per

Name:
Address:

Phone:

Defendant in Pro Per

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF _____

_____ DIVISION/BRANCH

_____, Plaintiff(s), v. _____, _____, Defendant(s).	Case No._____ ORDER GRANTING RELIEF FROM EVICTION

Defendant's motion for Relief From Eviction came on for hearing in Department _____ of the above-entitled Court on _____, _____, said defendant appearing in pro per and Plaintiff(s) appearing by _____.

The matter having been argued and submitted,

IT IS HEREBY ORDERED that Defendant's Application for Relief From Eviction is granted at the following date and time: _____.

Dated: _____ _____
Judge of the Superior Court

Defendant in Pro Per

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF _____

_____ DIVISION/BRANCH

_____, Plaintiff(s), v. _____, _____, Defendant(s).	Case No._____ APPLICATION AND DECLARATION FOR STAY OF EVICTION

Defendant(s) _____

_____ hereby apply for stay of execution from any writ of restitution or possession in this case, for the following period of time:

_____.

Such a stay is appropriate in this case for the following reason(s): _____

_____

_____.

I declare under penalty of perjury under the laws of the State of California that the above statements are true and correct.

Dated: _____ _____

Name:
Address:

Phone:

Defendant in Pro Per

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF _____

_____ DIVISION/BRANCH

_____, _____, Plaintiff(s), v. _____, _____, Defendant(s).	Case No._____ ORDER GRANTING STAY OF EVICTION

Defendant's motion for Stay of Eviction came on for hearing in Department _____ of the above-entitled Court on _____, _____, said defendant appearing in pro per and Plaintiff(s) appearing by_____.

The matter having been argued and submitted,

IT IS HEREBY ORDERED that Defendant's Application for Stay of Eviction is granted.

Dated: _____ _____
Judge of the Superior Court

Defendant in Pro Per

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF _____

_____ DIVISION/BRANCH

_____, Plaintiff(s), v. _____, _____, Defendant(s).	Case No._____ NOTICE OF APPEAL AND NOTICE TO PREPARE CLERK'S TRANSCRIPT

Defendant(s) _____ _____ hereby appeal to the Appellate Department of the Superior Court.

Defendant(s) hereby request that a Clerk's Transcript be prepared, and that this transcript include all documents filed in this action and all minute orders and other rulings and judgments issued by the court in this action.

Dated: _____ _____

CP10

CLAIMANT OR CLAIMANT'S ATTORNEY (*Name and Address*): TELEPHONE NO.:	*FOR COURT USE ONLY*
ATTORNEY FOR (*Name*):	
NAME OF COURT: STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	CASE NUMBER:
Plaintiff: Defendant:	*(For levying officer use only)* Completed form was received on Date: _____ Time: _____ By: _____
CLAIM OF RIGHT TO POSSESSION AND NOTICE OF HEARING	

Complete this form only if ALL of these statements are true:

1. You are NOT named in the accompanying form called *Writ of Possession*.
2. You occupied the premises on or before the date the unlawful detainer (eviction) action was filed. *(The date is in the accompanying Writ of Possession.)*
3. You still occupy the premises.
4. A *Prejudgment Claim of Right to Possession* form was NOT served with the *Summons and Complaint*, OR this eviction results from a foreclosure.

NOTICE: If you are being evicted because of foreclosure, you have additional rights and should seek legal assistance immediately.

I DECLARE THE FOLLOWING UNDER PENALTY OF PERJURY:

1. My name is *(specify):*
2. I reside at *(street address, unit no., city and ZIP code):*

3. The address of "the premises" subject to this claim is *(address)*:

☐ Check here if this property was foreclosed on.

4. On *(insert date):* , the owner, landlord, or the landlord's authorized agent filed a complaint to recover possession of the premises. *(This date is the accompanying Writ of Possession.)*
5. I occupied the premises on the date the complaint was filed *(the date in item 4)*. I have continued to occupy the premises ever since.
6. I was at least 18 years of age on the date the complaint was filed *(the date in item 4)*.
7. I claim a right to possession of the premises because I occupied the premises on the date the complaint was filed *(the date in item 4)*.
8. I was not named in the *Writ of Possession*.
9. I understand that if I make this claim of possession, a court hearing will be held to decide whether my claim will be granted.
10. *(Filing fee) To obtain a court hearing on my claim,* I understand that after I present this form to the levying officer I must go to the court and pay a filing fee of $ or file with the court *"Application for Waiver of Court Fees and Costs."* I understand that if I don't pay the filing fee or file the form for waiver of court fees within 2 court days, the court will immediately deny my claim.
11. *(Immediate court hearing unless you deposit 15 days' rent)* To obtain a court hearing on my claim, I understand I must also present a copy of this completed complaint form or a receipt from the levying officer. I also understand the date of my hearing will be set immediately if I do not deliver to the court an amount equal to 15 days' rent.

(Continued on reverse)

Plaintiff: Defendant:	CASE NUMBER:

12. I am filing my claim in the following manner *(check the box that shows how you are filing your claim. Note that you must deliver to the court a copy of the claim form or a levying officer's receipt):*
    a. ☐ I presented this claim form to the sheriff, marshal, or other levying officer, AND within two court days I shall deliver to the court the following: (1) a copy of this completed claim form or a receipt, (2) the court filing fee or form for proceeding in forma pauperis, and (3) an amount equal to 15 days' rent; or
    b. ☐ I presented this claim form to the sheriff, marshal, or other levying officer, AND within two court days I shall deliver to the court (1) a copy of this completed claim form or a receipt, and (2) the court filing fee or form for proceeding in forma pauperis.

IMPORTANT: Do not take a copy of this claim form to the court unless you have first given the form to the sheriff, marshal, or other levying officer.

(To be completed by the court)

Date of hearing: Time: Dept. or Div.: Room:
Address of court:

NOTICE: If you fail to appear at this hearing you will be evicted without further hearing.

13. **Rental agreement.** I have *(check all that apply to you)*:
    a. ☐ an oral rental agreement with the landlord.
    b. ☐ a written rental agreement with the landlord.
    c. ☐ an oral rental agreement with a person other than the landlord.
    d. ☐ a written rental agreement with a person other than the landlord.
    e. ☐ a rental agreement with the former owner who lost the property through foreclosure.
    f. ☐ other *(explain):*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

WARNING: Perjury is a felony punishable by imprisonment in the state prison.

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF CLAIMANT)

NOTICE: If your claim to possession is found to be valid, the unlawful detainer action against you will be determined at trial. At trial, you may be found liable for rent, costs, and, in some cases, treble damages.

— NOTICE TO OCCUPANTS —

YOU MUST ACT AT ONCE if all the following are true:

1. **You are NOT named, in the accompanying form called Writ of Possession;**
2. **You occupied the premises on or before the date the unlawful detainer (eviction) action was filed***; and*
3. **You still occupy the premises.**
4. **A Prejudgment Claim of Right to Possession form was NOT served with the Summons and Complaint, OR you are being evicted due to foreclosure.**

You can complete and SUBMIT THIS CLAIM FORM

(1) Before the date of eviction at the sheriff's or marshal's office located at *(address)*:

(2) OR at the premises at the time of the eviction. *(Give this form to the officer who comes to evict you.)*

If you do not complete and submit this form (and pay a filing fee or file the form for proceeding in forma pauperis if you cannot pay the fee), YOU WILL BE EVICTED along with the parties named in the writ.

After this form is properly filed, A HEARING WILL BE HELD to decide your claim. If you do not appear at the hearing, you will be evicted without a further hearing.

Index

C

D

E

F

G

H

I

J

K

L

M

N

O

P

R

S

T

U

V

W

Y

NOLO *Online Legal Forms*

Nolo offers a large library of legal solutions and forms, created by Nolo's in-house legal staff. These reliable documents can be prepared in minutes.

Create a Document

- **Incorporation.** Incorporate your business in any state.
- **LLC Formations.** Gain asset protection and pass-through tax status in any state.
- **Wills.** Nolo has helped people make over 2 million wills. Is it time to make or revise yours?
- **Living Trust (avoid probate).** Plan now to save your family the cost, delays, and hassle of probate.
- **Trademark.** Protect the name of your business or product.
- **Provisional Patent.** Preserve your rights under patent law and claim "patent pending" status.

Download a Legal Form

Nolo.com has hundreds of top quality legal forms available for download—bills of sale, promissory notes, nondisclosure agreements, LLC operating agreements, corporate minutes, commercial lease and sublease, motor vehicle bill of sale, consignment agreements and many, many more.

Review Your Documents

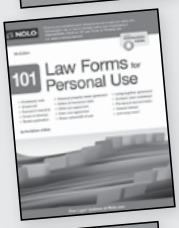
Many lawyers in Nolo's consumer-friendly lawyer directory will review Nolo documents for a very reasonable fee. Check their detailed profiles at **Nolo.com/lawyers**.

Nolo's Bestselling Books

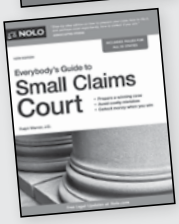
Nolo's Essential Guide to Buying Your First Home
$24.99

Neighbor Law
Fences, Trees, Boundaries & Noise
$29.99

Every Tenant's Legal Guide
$34.99



101 Law Forms for Personal Use
$29.99



Everybody's Guide to Small Claims Court
$29.99

Every Nolo title is available in print and for download at Nolo.com.